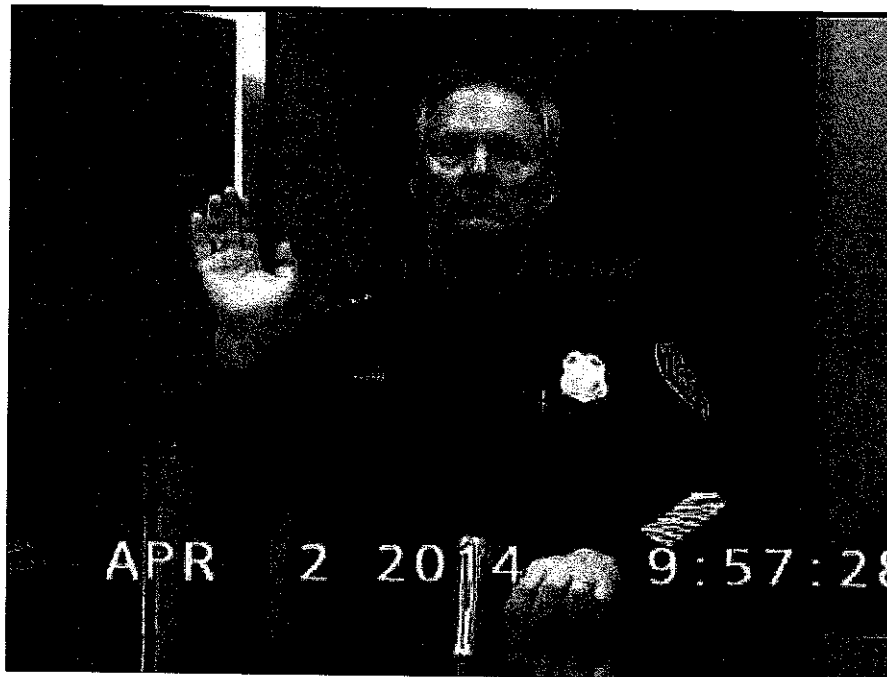


United States District Court  
Eastern District of Wisconsin

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**Estate of Perry v. Wenzel**  
12-CV-664



Video Deposition of  
**Chief Edward Flynn**  
Recorded 04/02/2014 in Milwaukee, WI  
9:57 am - 1:03 pm, 176 mins. elapsed

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**Magne-Script**  
(414) 352-5450



*20421 Condensed transcript with index*

# Video Deposition of Chief Edward Flynn 4/2/2014

1 (Pages 1 to 4)

| <p style="text-align: center;">Page 1</p> <p>Witness<br/>Chief Edward Flynn</p> <p>Wednesday 04/02/2014 at 10:15 by: Jeff Joseph</p> <p>Police Administration Building<br/>950 N. James Lovell St.<br/>Milwaukee, WI</p> <p>Estate of Perry v. Wenzel<br/>12-CV-664<br/>United States District Court<br/>Eastern District of Wisconsin</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p style="text-align: center;">Page 3</p> <p style="text-align: center;">INDEX</p> <table style="width: 100%;"> <thead> <tr> <th style="text-align: left;">EXAMINATION BY</th> <th style="text-align: right;">PAGE NO.</th> </tr> </thead> <tbody> <tr> <td>Mr. Gende .....</td> <td style="text-align: right;">3</td> </tr> <tr> <td>Mr. Jones .....</td> <td style="text-align: right;">140</td> </tr> <tr> <th style="text-align: left;">EXHIBIT NO.</th> <th style="text-align: right;">PAGE NO.</th> </tr> <tr> <td>68 - Notice of Deposition .....</td> <td style="text-align: right;">4</td> </tr> <tr> <td>69 - Transcript of TV interview .....</td> <td style="text-align: right;">59</td> </tr> <tr> <td>70 - 11/21/12 MPD memo .....</td> <td style="text-align: right;">--</td> </tr> <tr> <td>71 - Interviews regarding in-custody deaths ...</td> <td style="text-align: right;">86</td> </tr> <tr> <td>72 - MPD investigation supplement .....</td> <td style="text-align: right;">137</td> </tr> </tbody> </table> <p>(The sealed original transcript was sent to Mr. Gende)</p> <p style="text-align: center;">EXAMINATION</p> <p>BY MR. GENDE:</p> <p>Q Good morning, Chief. Could you please state your name and spell your last name for the record?</p> <p>A Edward Flynn, F-I-y-n-n.</p> <p>Q Chief Flynn, I'm going to ask you a series of questions regarding your knowledge of policies and procedures at the Milwaukee Police Department and the events surrounding Mr. Perry's in-custody death. If you don't understand my question, please tell me so and I'll attempt to rephrase it in a manner that's more clear. Is that fair?</p> <p>A Yep.</p> | EXAMINATION BY | PAGE NO. | Mr. Gende ..... | 3 | Mr. Jones ..... | 140 | EXHIBIT NO. | PAGE NO. | 68 - Notice of Deposition ..... | 4 | 69 - Transcript of TV interview ..... | 59 | 70 - 11/21/12 MPD memo ..... | -- | 71 - Interviews regarding in-custody deaths ... | 86 | 72 - MPD investigation supplement ..... | 137 |
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| <p style="text-align: center;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 James J. Gende</p> <p>2 Gende Law Office, S.C.</p> <p>3 N28 W23000 Roundy Dr.</p> <p>4 Pewaukee, WI 53072</p> <p>5 On behalf of the Plaintiffs</p> <p>6</p> <p>7</p> <p>8 Christopher P. Katers</p> <p>9 Judge, Lang &amp; Glynn, S.C.</p> <p>10 8112 W. Bluemound Rd. #71</p> <p>11 Milwaukee, WI 53213</p> <p>12 On behalf of the Plaintiffs</p> <p>13</p> <p>14 Andrew A. Jones</p> <p>15 Whyte Hirschboeck Dudek S.C.</p> <p>16 555 E. Wells St. #1900</p> <p>17 Milwaukee, WI 53202</p> <p>18 On behalf of the Milwaukee County Defendants</p> <p>19</p> <p>20 Susan E. Lappen</p> <p>21 Milwaukee City Attorneys Office</p> <p>22 841 N. Broadway #716</p> <p>23 Milwaukee, WI 53202</p> <p>24 On behalf of the City of Milwaukee Defendants</p> <p>25</p> | <p style="text-align: center;">Page 4</p> <p>1 Q If you answer my question, I will presume that you</p> <p>2 understood it. Is that fair?</p> <p>3 A Yes.</p> <p>4 Q Please allow me to ask my entire question before you</p> <p>5 attempt to answer, and I'll afford you the same</p> <p>6 courtesy so that we may keep the record clear. Okay?</p> <p>7 A Okay.</p> <p>8 (Exhibit 68 identified)</p> <p>9 Q Sir, I'm going to show you what we've marked as</p> <p>10 Exhibit No. 68, which is the Notice of Deposition</p> <p>11 requiring your appearance here today, which was set</p> <p>12 for 10:15. We did agree to appear early in an attempt</p> <p>13 to accommodate your schedule. Pursuant to this</p> <p>14 notice, you were required to bring with you any</p> <p>15 documents that you reviewed in preparation for your</p> <p>16 deposition. Did you do that, sir?</p> <p>17 A Nope.</p> <p>18 Q Did you review any documents in preparation for your</p> <p>19 deposition?</p> <p>20 A As I was preparing for my deposition, I looked at the</p> <p>21 Critical Incident Review Board Report on the incident.</p> <p>22 Q And when was that, sir?</p> <p>23 A That was yesterday.</p> <p>24 Q Did you meet with your attorney in preparation for</p> <p>25 your deposition?</p>                                                                                                                                                                                                                                                                                                                                                                                 |                |          |                 |   |                 |     |             |          |                                 |   |                                       |    |                              |    |                                                 |    |                                         |     |

# Video Deposition of Chief Edward Flynn 4/2/2014

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| <p style="text-align: center;">Page 5</p> <p>1 A Yes, I did.</p> <p>2 Q On how many occasions?</p> <p>3 A Once.</p> <p>4 Q And when did that meeting occur?</p> <p>5 A Yesterday, I guess.</p> <p>6 THE WITNESS: [Addressing Ms. Lappen] Day</p> <p>7 before yesterday?</p> <p>8 A Yesterday.</p> <p>9 BY MR. GENDE:</p> <p>10 Q And how long did you meet for, sir?</p> <p>11 A Oh, I don't know. About a half an hour.</p> <p>12 Q All right. Other than reviewing the Critical Incident</p> <p>13 Report and meeting with your attorney, did you</p> <p>14 undertake any other steps to prepare for your</p> <p>15 deposition today?</p> <p>16 A No, I did not.</p> <p>17 Q Have you spoke with any of the officers that have been</p> <p>18 previously deposed?</p> <p>19 A No.</p> <p>20 Q Who is the most responsible at the Milwaukee Police</p> <p>21 Department for training officers on policies and</p> <p>22 procedures?</p> <p>23 A I need a better sense of what you're getting at. Do</p> <p>24 you need to know who is in charge of the Police</p> <p>25 Academy or who is in charge of the police department</p>                                                                                                                                                                                                                                                                                                                                                                        | <p style="text-align: center;">Page 7</p> <p>1 A Well, you know, through me. I delegate authority to</p> <p>2 take care of certain aspects of police administration,</p> <p>3 so when I made the decision that we needed to amend</p> <p>4 the policy, I delegated the amendment of the policy to</p> <p>5 the Office of Management and Planning, which reports</p> <p>6 to one two-star inspector; the Police Academy reports</p> <p>7 to a separate two-star inspector.</p> <p>8 It was that inspector's job to reach out to the</p> <p>9 deputy inspector at the academy and create training</p> <p>10 around the new protocol, that we'd go through all the</p> <p>11 various in-service trainings of that year. And</p> <p>12 obviously through the Operations commanders, we put</p> <p>13 out a roll-call training, which simply updated the</p> <p>14 officers at the work sites that there had been an</p> <p>15 amendment to the policy.</p> <p>16 Q The policy that we're discussing is 090. Are you</p> <p>17 familiar with that new policy?</p> <p>18 A I'm familiar with the aspect of it that pertains to</p> <p>19 the lessons learned here, yeah.</p> <p>20 Q And when you say "lessons learned here," is that in</p> <p>21 relation to Mr. Perry's in-custody death?</p> <p>22 A That's correct.</p> <p>23 Q And tell me what policy was in place prior to Mr.</p> <p>24 Perry's in-custody death as it relates to medical</p> <p>25 emergencies for inmates.</p>                |
| <p style="text-align: center;">Page 6</p> <p>1 or who is in charge of the bureau of which the Police</p> <p>2 Academy is? Which do you want to know?</p> <p>3 Q Let me ask you this. Once officers are out of the</p> <p>4 academy, does their training stop?</p> <p>5 A No.</p> <p>6 Q If the policies and procedures are changed after an</p> <p>7 officer is outside of the academy, how are those</p> <p>8 policies and procedures communicated to officers?</p> <p>9 A Two ways. One is through roll-call training, which</p> <p>10 takes place at every work site, and another is through</p> <p>11 the annual in-service training at the Police Academy.</p> <p>12 Q For instance, policies and procedures were changed</p> <p>13 regarding medical emergencies as it relates to inmates</p> <p>14 who suffer from a medical condition. Tell me how that</p> <p>15 policy and procedure was subsequently communicated to</p> <p>16 officers so they would understand their new</p> <p>17 responsibilities in that regard.</p> <p>18 A It was communicated through -- to all officers who</p> <p>19 went through in-service training that year, which was</p> <p>20 everybody, and it was also read at all the roll-calls</p> <p>21 so that officers were aware that the policy had been</p> <p>22 amended.</p> <p>23 Q Is there a specific officer in your chain of command</p> <p>24 that is ultimately responsible to make sure that</p> <p>25 information is disseminated to all officers?</p> | <p style="text-align: center;">Page 8</p> <p>1 A I really can't recite for you what the policy said. I</p> <p>2 can tell you what was not in the policy. And that</p> <p>3 policy did not anticipate a circumstance in which our</p> <p>4 officers would disagree with the medical diagnosis of</p> <p>5 a hospital and attempt to see the prisoner admitted</p> <p>6 against the hospital's wishes. We didn't have a</p> <p>7 policy that anticipated our officers being in that</p> <p>8 circumstance.</p> <p>9 And so that's the amendment we made, was to try</p> <p>10 to put in place a policy which would give supervisory</p> <p>11 backup to the officers' concerns; and if it couldn't</p> <p>12 be resolved, get the prisoner to the Central Judicial</p> <p>13 Facility as soon as possible because they do have</p> <p>14 medical staff there. We don't have medical staff at</p> <p>15 the jail. And that was the purpose of the change in</p> <p>16 the policy.</p> <p>17 So the rest of it, I really couldn't tell you,</p> <p>18 but I remember why we changed it, and we changed it</p> <p>19 because we had a circumstance that our policy, I don't</p> <p>20 know if anybody else's policy, had anticipated.</p> <p>21 Q You mentioned the Central Judicial Facility, and maybe</p> <p>22 I misheard that. Are you referring to the sheriff's</p> <p>23 department facility?</p> <p>24 A That's correct. Yeah.</p> <p>25 Q How were your officers trained on recognizing a</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

3 (Pages 9 to 12)

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| <p style="text-align: center;">Page 9</p> <p>1 medical emergency prior to September 13th of 2010, if<br/>2 you know?<br/>3 A I don't know offhand. I do know our training meets<br/>4 the standards of the Wisconsin law enforcement<br/>5 training people, but I don't -- I don't know what the<br/>6 exact training was.<br/>7 Q Generally, what's your understanding pursuant to<br/>8 department policies and procedures what constitutes a<br/>9 medical emergency?<br/>10 A That's a subjective call. I mean, if somebody is --<br/>11 appears to be in distress, it's our expectation that<br/>12 people will get them medical help, as occurred in this<br/>13 circumstance.<br/>14 Q Relative to medical emergencies, do you have an<br/>15 understanding or definition for what constitutes a<br/>16 change in condition?<br/>17 A You'd have to refer to the policy. I don't know<br/>18 offhand.<br/>19 Q As the chief of police for Milwaukee, do you have an<br/>20 understanding what a change of condition may be that<br/>21 would suggest a medical emergency is occurring to an<br/>22 inmate?<br/>23 A It's not a call that I am likely to ever have to make.<br/>24 We develop our policies based on standards set by the<br/>25 state, we train our officers based on standards set by</p>                         | <p style="text-align: center;">Page 11</p> <p>1 Q When did you first become advised that Mr. Perry had<br/>2 passed away while in custody of the Milwaukee Police<br/>3 Department?<br/>4 A I really can't recall. This happened in 2010. I<br/>5 don't remember exactly when I was told.<br/>6 Q Is it policy and procedure that the chief be advised<br/>7 within 24 hours of a in-custody death for an inmate?<br/>8 A It's the expectation that I'll be advised as soon as<br/>9 practical. Obviously it's a critical incident and<br/>10 something I'm going to want to be made aware of.<br/>11 Q Do you recall initially what information was provided<br/>12 to you about Mr. Perry's in-custody death as soon as<br/>13 practical after he passed away?<br/>14 A I don't recall.<br/>15 Q Do you know if you were on duty at the time?<br/>16 A I do not recall.<br/>17 Q Do you know if it was via telephone call or an officer<br/>18 coming into your office?<br/>19 A Don't remember.<br/>20 Q Do you know how many individuals in the custody of the<br/>21 Milwaukee Police Department have passed away since<br/>22 you've become chief?<br/>23 A Not exactly. It's a very, very small number, though.<br/>24 Q More than ten, less than ten?<br/>25 A It's less than ten.</p>                                                                                                                                                                      |
| <p style="text-align: center;">Page 10</p> <p>1 the state, and our policies comply with them. That's<br/>2 my expectation, that our officers will be trained to<br/>3 comply with the policies we have that meet state<br/>4 standards.<br/>5 Q And as we sit here today, are you able to describe for<br/>6 me what policies you're referring to that provide<br/>7 training to your officers to recognize a changing<br/>8 condition that may constitute a medical emergency for<br/>9 one of your inmates?<br/>10 A I have not personally taken the training that<br/>11 accompanies the policies that we have, so I couldn't<br/>12 tell you.<br/>13 Q You mentioned, as it relates to Mr. Perry's case, that<br/>14 he suffered a medical emergency, appeared in distress.<br/>15 Is that the time period when he was first taken to the<br/>16 emergency room that you are referring to?<br/>17 A That's correct.<br/>18 Q And what type of distress did he suffer that suggested<br/>19 he was having a medical emergency requiring an<br/>20 emergency room visit?<br/>21 A It is my understanding that he had a seizure.<br/>22 Q How did you come to that understanding?<br/>23 A Well, I was advised of that subsequent to the incident<br/>24 and the demise of the patient as we did our internal<br/>25 investigation.</p> | <p style="text-align: center;">Page 12</p> <p>1 Q And in those instances where a individual in the<br/>2 custody of the Milwaukee Police Department has passed<br/>3 away, has there ever been an occasion where a critical<br/>4 incident investigation has not been undertaken?<br/>5 A Well, we started the Critical Incident Review process<br/>6 I think only a year or so ago, and we've been going<br/>7 backwards to prior critical incidents and evaluating<br/>8 them.<br/>9 So, you know, we did not have the CIRB in<br/>10 existence in 2010, but we have subsequently examined<br/>11 it after we put this in place in order to create a<br/>12 process by which we can learn lessons from the<br/>13 incidents outside of the internal investigation or any<br/>14 criminal investigations; what other lessons might we<br/>15 learn? And it was in that context, we think it's our<br/>16 obligation. No policy in any agency can cover every<br/>17 conceivable incident that can occur. Just can't.<br/>18 Nobody's got them.<br/>19 And so there are times when an unanticipated<br/>20 incident, not anticipated by current policy, occurs,<br/>21 and you need to identify what that is and see if we<br/>22 can learn from it and adjust our policies and<br/>23 trainings to deal with it. And this circumstance, as<br/>24 I say, I don't know a police department that's got a<br/>25 policy that anticipates that the officers having</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

4 (Pages 13 to 16)

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| <p style="text-align: center;">Page 13</p> <p>1 medical concerns that the hospital is choosing for<br/>2 whatever reason not to recognize.<br/>3 That was our problem. He should have been<br/>4 admitted to the hospital. He wasn't. And he was<br/>5 discharged to us. Our officers took him back to the<br/>6 facility and, you know, continued the process to get<br/>7 him prepared to go to CJF. It's our evaluation of<br/>8 that that we would have been better served by a policy<br/>9 that A) elevated the concerns about the hospital<br/>10 personnel to higher-ranking authority to try to<br/>11 intervene, see if we could get them to change their<br/>12 mind; and if we still failed that, to expedite getting<br/>13 him to CJF simply for the fact that CJF, since it's a<br/>14 permanent jail facility, has medical personnel on<br/>15 call, available there in person. And they're in a<br/>16 better position to say this guy needs medical<br/>17 attention, get him to the hospital. And we could get<br/>18 him to the hospital that way, or CJF could get him to<br/>19 the hospital because they would have medical<br/>20 personnel.<br/>21 So, as I say, this was not something that had<br/>22 occurred to us before. It hadn't happened before.<br/>23 And consequently we amended the policy. But keep in<br/>24 mind, the policy we amended already met the state<br/>25 standards for handling sick prisoners. The state</p> | <p style="text-align: center;">Page 15</p> <p>1 been disciplined relative to in-custody deaths, based<br/>2 on this review that you have testified to today?<br/>3 A No. Not to my knowledge.<br/>4 Q Is it fair to say that when Mr. Perry passed away in<br/>5 September of 2010, the only procedure in place to<br/>6 investigate the incident surrounding his death was an<br/>7 Internal Affairs investigation?<br/>8 A No, it's not fair to say that. The district<br/>9 attorney's office investigates these as well.<br/>10 Q Other than the district attorney and Internal Affairs<br/>11 looking at the incidents surrounding an in-custody<br/>12 death, including Mr. Perry's, was there any other<br/>13 policy or procedure in place for the police department<br/>14 to review whether or not officers' conduct or<br/>15 misconduct may have been a cause of the death?<br/>16 A Well, that's part of the Internal Affairs<br/>17 investigation. I mean, the cause of death was<br/>18 undiagnosed heart disease. That's clear in the<br/>19 autopsy report. The officers did nothing to cause<br/>20 that. The open question is whether or not they could<br/>21 have prevailed on the hospital to admit him if the<br/>22 hospital might have been in position to take<br/>23 lifesaving measures sooner to save his life. But<br/>24 there's not one scintilla of evidence to indicate<br/>25 anybody did anything to Mr. Perry except advocate on</p> |
| <p style="text-align: center;">Page 14</p> <p>1 doesn't have a policy that says if the hospital won't<br/>2 admit a person you think needs to be admitted, here's<br/>3 what you do. They didn't anticipate it either.<br/>4 Q You had mentioned that a new Critical Incident Review<br/>5 policy was put into place after 2010 and that,<br/>6 pursuant to that policy, the police department has<br/>7 gone back and looked at other in-custody deaths --<br/>8 A Mm-hmm.<br/>9 Q -- to try and determine what, if anything, could have<br/>10 been done differently to prevent the bad outcome; is<br/>11 that correct?<br/>12 A That's correct.<br/>13 Q So is it fair to say that even though the policy was<br/>14 not in place prior to certain in-custody deaths, the<br/>15 police department has undertaken review of those?<br/>16 A We undertook -- yes, exactly. Well, we looked at the<br/>17 Perry case, and then, as I say, as part of this<br/>18 Critical Incident Review process, changed the policy.<br/>19 You know, the Perry case had to work its way through<br/>20 the system. But we also, once we did the evaluation,<br/>21 which I believe was last year, that's when we made the<br/>22 adjustment to the policy.<br/>23 Q And when you undertook a review, not only of the Perry<br/>24 case but other in-custody deaths as it relates to the<br/>25 new Critical Incident Review policy, has any officer</p>                       | <p style="text-align: center;">Page 16</p> <p>1 his behalf to the hospital personnel.<br/>2 Q When was it determined that Mr. Perry had passed away<br/>3 from an undiagnosed heart condition?<br/>4 A That was in the medical examiner's report, said he had<br/>5 atherosclerosis; cause of death, heart attack.<br/>6 Q Was that known prior to Internal Affairs undertaking<br/>7 an investigation into the events surrounding Mr.<br/>8 Perry's death?<br/>9 A I don't know if that -- I don't know exactly what the<br/>10 timelines were, but I'm sure that the Internal Affairs<br/>11 investigation was not completed, you know, before the<br/>12 autopsy report came through.<br/>13 Q Have you seen an opinion or report from Internal<br/>14 Affairs which provides the results of their<br/>15 investigation?<br/>16 A Not recently, but I have, yeah.<br/>17 Q Do you understand that as part of the Internal Affairs<br/>18 investigation, statements were taken on the evening in<br/>19 question by detectives assigned from the police<br/>20 department, correct?<br/>21 A I'm going to assume so.<br/>22 Q Do you also understand that the medical examiner did<br/>23 not provide cause of death until November of 2010?<br/>24 A If that's what you say. I don't know.<br/>25 Q Do you know, as part of the Internal Affairs</p>                                                                                                                   |



# Video Deposition of Chief Edward Flynn 4/2/2014

5 (Pages 17 to 20)

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| <p style="text-align: center;">Page 17</p> <p>1 investigation that started on the evening Mr. Perry<br/> 2 died, who was in charge of that investigation?<br/> 3 A I don't recall.<br/> 4 Q Would there be a specific detective in charge, or<br/> 5 would a certain group be assigned to it? Tell me how<br/> 6 that process works.<br/> 7 A It depends on the circumstances. Sometimes the entire<br/> 8 investigation is handled by Internal Affairs.<br/> 9 Sometimes, if there's a violent death, there is the<br/> 10 homicide personnel are brought in. I don't know who<br/> 11 conducted this investigation.<br/> 12 Q After the investigation was completed, was there any<br/> 13 responsibility for Internal Affairs to report to you<br/> 14 their findings?<br/> 15 A Yes.<br/> 16 Q And tell me how that process works.<br/> 17 A I don't recall in this specific circumstance, but<br/> 18 normally they make a report, and they brief me on<br/> 19 their findings.<br/> 20 Q Were you advised pursuant to the Internal<br/> 21 investigation that Mr. Perry had suffered from any<br/> 22 change in condition after he was released from the<br/> 23 emergency room and brought back to the police<br/> 24 department's prebooking facility?<br/> 25 A My understanding was that after he was administered</p>                                                                                                                                                                                      | <p style="text-align: center;">Page 19</p> <p>1 carried into the police department and then carried to<br/> 2 the cell?<br/> 3 A The expectation is that, understanding the result of<br/> 4 the administration of this sedative, that he would be<br/> 5 placed in an environment in which he couldn't do harm<br/> 6 to himself and that they would keep an eye on him.<br/> 7 The understanding was this was a powerful sedative,<br/> 8 and it would be expected that he wouldn't be able to<br/> 9 walk or otherwise move, so they placed him in what I<br/> 10 suspect they perceived to be a secure place and kept<br/> 11 an eye on him. But I don't know what the exact<br/> 12 sequence of that consisted of.<br/> 13 Q Well, I'm not inquiring of the exact sequence. My<br/> 14 question to you as the chief of police is whether or<br/> 15 not you would have expected your officers to perform a<br/> 16 higher level of observation of an inmate who was under<br/> 17 a strong sedative, had suffered from seizures earlier<br/> 18 requiring an emergency room visit, was unable to walk<br/> 19 into the police department upon return from the<br/> 20 emergency room, had to be carried in, and then had to<br/> 21 be placed in a cell for observation. Is that a normal<br/> 22 observation level, or would you expect some greater<br/> 23 observation under those circumstances?<br/> 24 A I would expect him to be observed. The officers had<br/> 25 conveyed him to a hospital, which told him there was</p> |
| <p style="text-align: center;">Page 18</p> <p>1 apparently a very strong sedative at the hospital, he<br/> 2 had great difficulty walking. And our officers were<br/> 3 unable to get him to walk from the car to the facility<br/> 4 and ultimately had to carry him into the processing<br/> 5 unit. And while there they had to sit him down on the<br/> 6 floor because he literally could not stand. This was<br/> 7 allegedly part of the kicking in of the sedative that<br/> 8 had been administered to him at the hospital.<br/> 9 While there, he began to spit; and the officers,<br/> 10 as per the protocols, put a spit mask on him and<br/> 11 conveyed him to a cell for observation while the<br/> 12 paperwork was finished to convey him to CJF.<br/> 13 Q Do you know if the observation that Mr. Perry was<br/> 14 supposed to receive after he was conveyed to the cell<br/> 15 was over and above what would normally occur for a<br/> 16 prisoner put in a cell as a result of Mr. Perry's<br/> 17 prior medical emergent situation where he had gone to<br/> 18 the emergency room and then been returned to the<br/> 19 police department?<br/> 20 A I don't recall precisely.<br/> 21 Q Should there have been a higher level of observation<br/> 22 by Milwaukee police officers as it relates to Mr.<br/> 23 Perry, considering he had been released from the<br/> 24 emergency room and was unable to walk under his own as<br/> 25 a result of medications that required him to be</p> | <p style="text-align: center;">Page 20</p> <p>1 nothing wrong with him. They had discussed with<br/> 2 medical personnel they were concerned about his<br/> 3 condition and were told by medical personnel that they<br/> 4 thought he was faking. Medical personnel administered<br/> 5 a strong sedative, which they said would make him<br/> 6 sleep and he would be unable to walk.<br/> 7 Everything that Mr. Perry demonstrated in CJF was<br/> 8 consistent with what medical personnel told our<br/> 9 personnel to expect. So I would expect them to<br/> 10 observe him. I would not expect them to have him<br/> 11 under 24-hour observation or minute-by-minute<br/> 12 observation given the set of circumstances that had<br/> 13 been presented to them by allegedly competent medical<br/> 14 personnel.<br/> 15 Q You mentioned CJF in your answer. Did you mean the<br/> 16 Prisoner Processing Section for MPD?<br/> 17 A No. I mean when -- to take him to the County, which<br/> 18 is where he gets booked into the county system, they<br/> 19 as standard practice have medical personnel there.<br/> 20 They're a full-service facility that way. And so<br/> 21 that's why when we amended the policy, we said get him<br/> 22 directly over there when you have this kind of crossed<br/> 23 opinions with hospital personnel. We're not doctors.<br/> 24 So get him someplace where there is medical personnel<br/> 25 that theoretically could intervene differently than we</p>                           |

# Video Deposition of Chief Edward Flynn 4/2/2014

6 (Pages 21 to 24)

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| <p style="text-align: center;">Page 21</p> <p>1 can.</p> <p>2 If they, for example, declined to admit him</p> <p>3 because he needed medical assistance, then they would</p> <p>4 be the ones summoning medical assistance. We wouldn't</p> <p>5 be the ones taking him back again and renewing it. It</p> <p>6 would be a different level of competence disputing the</p> <p>7 hospital's refusal.</p> <p>8 Q I just want to focus on the observation level you</p> <p>9 expected of your officers of Mr. Perry after he left</p> <p>10 the emergency room and was returned to PPS and before</p> <p>11 he was transported to the Criminal Justice Facility.</p> <p>12 A Mm-hmm.</p> <p>13 Q Is it your expectation or do you have an understanding</p> <p>14 under the policies and procedures in place in</p> <p>15 September of 2010 that Mr. Perry should have received</p> <p>16 a higher level of observation than what is the normal</p> <p>17 practice and procedure for prisoners that are put into</p> <p>18 cells at the PPS?</p> <p>19 A What I'm saying is that he should have received a</p> <p>20 level of observation consistent with our policy and</p> <p>21 consistent with what the officers knew at the time</p> <p>22 that had been conveyed to them by medical personnel in</p> <p>23 terms of what to expect from the administration of his</p> <p>24 sedative and what the hospital thought his medical</p> <p>25 condition was. What that exactly consists of, I would</p> | <p style="text-align: center;">Page 23</p> <p>1 consistent with those two realities.</p> <p>2 Q Do you feel that a thorough investigation was done as</p> <p>3 it relates to Mr. Perry's death prior to the medical</p> <p>4 examiner opining that Mr. Perry suffered from a heart</p> <p>5 condition that caused his death?</p> <p>6 A Yes.</p> <p>7 Q And did you personally satisfy yourself in that regard</p> <p>8 that a thorough investigation had been done prior to</p> <p>9 the medical examiner's report in November of 2010?</p> <p>10 MS. LAPPEN: Objection as to the form of the</p> <p>11 question.</p> <p>12 Go ahead and answer.</p> <p>13 A I'm not really sure what you mean, did I personally</p> <p>14 satisfy myself.</p> <p>15 BY MR. GENDE:</p> <p>16 Q Well, you were advised as soon as practical that Mr.</p> <p>17 Perry had passed away while in the custody of the</p> <p>18 Milwaukee Police Department, correct?</p> <p>19 A Mm-hmm. Yes. Sorry.</p> <p>20 Q And you understood that as part of that critical</p> <p>21 incident, both the district attorney and your Internal</p> <p>22 Affairs Division would be asking questions, taking</p> <p>23 interviews, reviewing video if it was available, and</p> <p>24 trying to determine whether or not, first of all, if</p> <p>25 misconduct had occurred, correct?</p>                                                                                                                                                |
| <p style="text-align: center;">Page 22</p> <p>1 have to leave to some level of discretion to the</p> <p>2 personnel there, but it should be consistent with what</p> <p>3 they had been advised and what they knew at the time.</p> <p>4 Q So in your opinion, would that be a higher level of</p> <p>5 observation for somebody who had been returned from</p> <p>6 the emergency room, or would it just be standard</p> <p>7 operating procedures that any inmate who was put into</p> <p>8 a cell would receive as far as observation is</p> <p>9 concerned?</p> <p>10 MS. LAPPEN: Objection. It's been asked and</p> <p>11 answered a couple of times now.</p> <p>12 But go ahead and answer.</p> <p>13 MR. GENDE: I don't know that it's clear, so</p> <p>14 I'm asking him for some --</p> <p>15 A Well, I mean, I'm not trying to be evasive, but what I</p> <p>16 am trying to convey is that within the guidelines of</p> <p>17 policy and what one has been advised by competent</p> <p>18 medical personnel, the observation should be</p> <p>19 consistent with those two realities. I don't know</p> <p>20 precisely how much observation they gave him. I do</p> <p>21 know that we have a policy that guides how much</p> <p>22 observation to give, and they had been presented</p> <p>23 certain information by the hospital that they were</p> <p>24 aware of. And given what they knew, what the policy</p> <p>25 said, their observations should be, you know,</p>                | <p style="text-align: center;">Page 24</p> <p>1 A Mm-hmm. Yes.</p> <p>2 Q And secondly, if there was anything that could have</p> <p>3 been done differently that might have prevented this</p> <p>4 tragic outcome, true?</p> <p>5 A Well, the investigation by Internal Affairs is about</p> <p>6 ascertaining whether or not there was culpability on</p> <p>7 the part of our officers. Having, you know, read the</p> <p>8 report at the time, I was satisfied that they had</p> <p>9 gotten to the bottom of what happened in terms of our</p> <p>10 processes, our procedures, and the conduct of our</p> <p>11 officers.</p> <p>12 Subsequent to that, probably about three years</p> <p>13 later when we constituted the Critical Incident Review</p> <p>14 Board, maybe it was two years later, we started not</p> <p>15 only prospectively doing investigations of new cases,</p> <p>16 but we went back a few years to look at old critical</p> <p>17 incidents, as I indicated earlier, to identify whether</p> <p>18 or not there were training or policy issues that arose</p> <p>19 out of those, and could we amend them. And we</p> <p>20 subsequently did in this case.</p> <p>21 So was I satisfied with the competence of the</p> <p>22 investigation? Yes, I was. I felt like they'd</p> <p>23 identified the sequence of events in a way that I felt</p> <p>24 I understood what occurred. And it certainly didn't</p> <p>25 appear from that that there had been any officer</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

7 (Pages 25 to 28)

| Page 25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 27                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <p>1 misconduct of a willful nature that had anything to do</p> <p>2 with Mr. Perry's demise.</p> <p>3 Q As a result of the follow-up investigation done, based</p> <p>4 on your new critical incident policy and procedure, do</p> <p>5 you know if any officers were disciplined regarding</p> <p>6 their conduct as it relates to Mr. Perry on the</p> <p>7 evening he died?</p> <p>8 A Well, the Critical Incident Review Board doesn't</p> <p>9 conduct a new investigation. They review all of the</p> <p>10 paperwork and the relevant policies, and it's through</p> <p>11 that review that they identify training and policy</p> <p>12 issues.</p> <p>13 Q Do you know if any officers were subsequently</p> <p>14 disciplined for misconduct as it relates to Mr. Perry?</p> <p>15 A My recollection is, as we evaluated the films of this</p> <p>16 incident, obviously we wanted to look at all available</p> <p>17 tapes at the Prisoner Processing -- I can't even</p> <p>18 remember what the last initial is. PP....</p> <p>19 MS. LAPPEN: "S," I think.</p> <p>20 THE WITNESS: "S." Okay.</p> <p>21 A Prisoner Processing Section. Okay. We looked at all</p> <p>22 the tapes there, we did find an instance in which we</p> <p>23 identified a lieutenant who made a remark that</p> <p>24 certainly was unprofessional and inconsistent with his</p> <p>25 responsibilities. I do know we investigated him, and</p> | <p>1 that inappropriate verbiage directly related to the</p> <p>2 critical incident itself is not an identical issue.</p> <p>3 Q You would agree as the police chief or chief of</p> <p>4 police, whichever is more politically correct, that</p> <p>5 you lead by example, true?</p> <p>6 A I attempt to set the tone for the organization through</p> <p>7 training, through policy, and through discipline.</p> <p>8 Q And you would expect that the command staff that you</p> <p>9 have appointed underneath you would do the same, true?</p> <p>10 A That is the expectation.</p> <p>11 Q And you would hope that from the top to the bottom</p> <p>12 those under your command and control would lead by</p> <p>13 example and according to the policies and procedures</p> <p>14 of the Milwaukee Police Department, correct?</p> <p>15 MS. LAPPEN: Object as to the form of the</p> <p>16 question.</p> <p>17 But go ahead and answer.</p> <p>18 A I expect them to comport themselves consistent with</p> <p>19 our policies and procedures, to hold their personnel</p> <p>20 accountable for adherence to them, and hold themselves</p> <p>21 accountable for adherence to them.</p> <p>22 BY MR. GENDE:</p> <p>23 Q This is a hypothetical question and not meant as any</p> <p>24 disrespect to you as the chief of police. If you were</p> <p>25 to walk into a situation where a prisoner was</p>                 |
| Page 26                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 28                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1 I do know we were putting together charges. And I</p> <p>2 don't recall precisely the sequence of events, but I</p> <p>3 believe, faced with what appeared to be some</p> <p>4 significant discipline, he subsequently retired.</p> <p>5 BY MR. GENDE:</p> <p>6 Q Do you as the police chief condone inhumane treatment</p> <p>7 of prisoners in the custody of the Milwaukee Police</p> <p>8 Department?</p> <p>9 A Certainly not.</p> <p>10 Q And you would agree that inhumane treatment of people</p> <p>11 in the custody of the Milwaukee Police Department can</p> <p>12 occur by deed, correct?</p> <p>13 A Yes.</p> <p>14 Q Or by word, correct?</p> <p>15 A Well, you know, if we're going to parse words, I mean,</p> <p>16 treatment is treatment, words are words. They're not</p> <p>17 identical. I certainly don't approve of inappropriate</p> <p>18 words.</p> <p>19 When we're trying to fix accountability for a</p> <p>20 critical incident resulting in death, we're going to</p> <p>21 look at the treatments, we're going to look at the</p> <p>22 deeds, we're going to look at what people</p> <p>23 affirmatively did or failed to do. If someone behaves</p> <p>24 unprofessionally, that's a violation of our values,</p> <p>25 and they'll be disciplined for it. Whether or not</p>                                                                                                                | <p>1 considered uncooperative and had urinated and</p> <p>2 defecated on himself, would you ever state to that</p> <p>3 prisoner in front of subordinate staff that if they</p> <p>4 were going to act like an animal, they would be</p> <p>5 treated like they were in prison?</p> <p>6 MS. LAPPEN: I'm going to object as to the</p> <p>7 question because of form, and also it does call</p> <p>8 for speculation.</p> <p>9 But subject to the objections, go ahead and</p> <p>10 answer.</p> <p>11 A Well, I think as we indicated in this particular case,</p> <p>12 we would hold somebody accountable for the words they</p> <p>13 uttered and for their demeanor as a supervisor. And</p> <p>14 we did.</p> <p>15 I would keep in mind that, despite the fact that</p> <p>16 he said this in front of his personnel, and he was</p> <p>17 clearly wrong and was clearly subject to significant</p> <p>18 discipline over it, prompting his retirement, that the</p> <p>19 officers to whom he was speaking had just spent time</p> <p>20 at the hospital desperately trying to get him admitted</p> <p>21 against the stone wall of hospital intransigence. So</p> <p>22 I would say yes, he said bad things for which he was</p> <p>23 accountable. He was saying them to officers who had</p> <p>24 just behaved, I think, very humanely in an attempt to</p> <p>25 advocate for a robbery -- somebody who had been</p> |



# Video Deposition of Chief Edward Flynn 4/2/2014

8 (Pages 29 to 32)

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| <p style="text-align: center;">Page 29</p> <p>1 arrested for robbery, who was in their custody, and</p> <p>2 they felt needed medical attention. So I don't think</p> <p>3 his words affected their conduct, but his words</p> <p>4 certainly indicated his lack of fitness for that</p> <p>5 position.</p> <p>6 BY MR. GENDE:</p> <p>7 Q I think you anticipate my line of questioning.</p> <p>8 A Well, I mean it's --</p> <p>9 Q But the --</p> <p>10 A But obviously the hypothetical is derived directly</p> <p>11 from the record.</p> <p>12 Q That's true, but I'm seeking an answer to the</p> <p>13 hypothetical. Would you as the chief of police</p> <p>14 undertake such a comment to somebody in front of your</p> <p>15 subordinates?</p> <p>16 A No. I --</p> <p>17 MS. LAPPEN: Same objections.</p> <p>18 But go ahead and answer.</p> <p>19 A Yeah. I wouldn't do it, and I wouldn't expect my</p> <p>20 subordinates to do it.</p> <p>21 BY MR. GENDE:</p> <p>22 Q And tell me, Chief, why wouldn't you make that type of</p> <p>23 comment in front of your subordinates to a person in</p> <p>24 the custody of the police department?</p> <p>25 A As I -- I'm sorry.</p>      | <p style="text-align: center;">Page 31</p> <p>1 A I don't recall it was put to him quite that directly,</p> <p>2 but, you know, it wouldn't surprise me because</p> <p>3 certainly he was facing significant discipline for</p> <p>4 that behavior.</p> <p>5 Q Earlier you had testified regarding your understanding</p> <p>6 of Mr. Perry's change in condition after he left the</p> <p>7 emergency room, and you mentioned that he was unable</p> <p>8 to walk under his own power. Were there any other</p> <p>9 characteristics of Mr. Perry that you understand was a</p> <p>10 change in his condition after he was released from the</p> <p>11 emergency room and once he arrived at the Prisoner</p> <p>12 Processing Section?</p> <p>13 A I recall two things. One was his inability to walk or</p> <p>14 otherwise stand erect. The other one was that he was</p> <p>15 expectorating, and that was the reason they put a</p> <p>16 expectorant shield on his face.</p> <p>17 Q Do you know if the officers that returned Mr. Perry</p> <p>18 from the emergency room -- strike that question. Do</p> <p>19 you know how long Mr. Perry had been sitting in his</p> <p>20 own urination and defecation when he was returned to</p> <p>21 the Prisoner Processing Section for the Milwaukee</p> <p>22 Police Department?</p> <p>23 A I don't recall what the sequence of events was there,</p> <p>24 no. I mean, he had just come from the hospital. I</p> <p>25 don't think he did it at the hospital.</p> |
| <p style="text-align: center;">Page 30</p> <p>1 MS. LAPPEN: Same objection.</p> <p>2 Go ahead and answer.</p> <p>3 A It's unprofessional.</p> <p>4 BY MR. GENDE:</p> <p>5 Q And the effect of that unprofessional conduct is what</p> <p>6 on subordinate staff, if there's any effect</p> <p>7 whatsoever?</p> <p>8 A Well --</p> <p>9 MS. LAPPEN: Object to that. That calls for</p> <p>10 speculation.</p> <p>11 THE WITNESS: Yeah.</p> <p>12 MS. LAPPEN: But go ahead and answer.</p> <p>13 A I mean, it depends on the quality of our subordinate</p> <p>14 staff. I mean, they are not automatons; they're not</p> <p>15 lemmings. Just because they have a supervisor who</p> <p>16 says dumb things doesn't mean they automatically go</p> <p>17 out and do a dumb thing. And in this situation, the</p> <p>18 officers didn't do a dumb thing, but the supervisor</p> <p>19 certainly said a dumb thing and deserved to be</p> <p>20 disciplined.</p> <p>21 BY MR. GENDE:</p> <p>22 Q Do you know that he was given the option of discipline</p> <p>23 for making an inhumane comment to a prisoner or</p> <p>24 retiring? And we're talking about Lieutenant Robbins</p> <p>25 here.</p> | <p style="text-align: center;">Page 32</p> <p>1 Q So based on the investigation that you reviewed and</p> <p>2 your understanding of the sequence of events, it's</p> <p>3 clear that Mr. Perry did not urinate or defecate on</p> <p>4 himself before he was released from the hospital,</p> <p>5 correct?</p> <p>6 A I can't say that it's clear. I just don't recall the</p> <p>7 sequence. I don't -- I don't think he would have been</p> <p>8 released from the hospital in that condition, but I</p> <p>9 don't know.</p> <p>10 Q So assuming for purposes of this line of questioning</p> <p>11 that Mr. Perry urinated and defecated on himself after</p> <p>12 he was released from the emergency room --</p> <p>13 A Mm-hmm.</p> <p>14 Q -- and before he was taken to the Criminal Justice</p> <p>15 Facility, would you agree that that could constitute a</p> <p>16 change in condition for an inmate under the custody</p> <p>17 and control of the Milwaukee Police Department?</p> <p>18 MS. LAPPEN: Objection to foundation. It</p> <p>19 calls for speculation.</p> <p>20 But go ahead and answer.</p> <p>21 A Yeah. Yes.</p> <p>22 BY MR. GENDE:</p> <p>23 Q Would you agree that somebody who was bleeding from an</p> <p>24 unknown source prior to arriving at the Criminal</p> <p>25 Justice Facility, that could exhibit a change in</p>                                                                                                                                                      |

# Video Deposition of Chief Edward Flynn 4/2/2014

9 (Pages 33 to 36)

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| <p style="text-align: center;">Page 33</p> <p>1 condition?</p> <p>2 A My understanding was that there was some blood in his</p> <p>3 spittle. I don't recall there being what would be</p> <p>4 characterized as an ongoing bleeding wound that was</p> <p>5 occurring. I understand there was some blood in his</p> <p>6 spittle.</p> <p>7 Q Do you know how long Mr. Perry had blood in his spit</p> <p>8 prior to arriving at the Criminal Justice Facility?</p> <p>9 A No, I don't.</p> <p>10 Q Do you even know if your officers made any attempt to</p> <p>11 determine the source of the blood coming from Mr.</p> <p>12 Perry after he was released from the emergency room</p> <p>13 and before he arrived at the Criminal Justice</p> <p>14 Facility?</p> <p>15 A My understanding is what they observed was felt to be</p> <p>16 consistent with the effects of the sedative that he'd</p> <p>17 been administered.</p> <p>18 Q Including blood from an unknown source?</p> <p>19 A Well, again, you know, if the mental picture is, you</p> <p>20 know, some sort of hemorrhaging, that's certainly</p> <p>21 different than what's been represented to me, which</p> <p>22 was that he had some blood in his spittle.</p> <p>23 Q Chief, I'm going to show you what we've previously</p> <p>24 marked as Exhibit No. 1. And this is a county</p> <p>25 document, a prescreening, health prescreening document</p> | <p style="text-align: center;">Page 35</p> <p>1 Q No problem.</p> <p>2 A No, I have not seen this before.</p> <p>3 Q So above this narrative, it states, per Exhibit 1,</p> <p>4 "Additional clinical information: Fill in only if</p> <p>5 being rejected."</p> <p>6 A Mm-hmm.</p> <p>7 Q Do you see that above the narrative? It's right above</p> <p>8 it, Chief.</p> <p>9 A Oh, so they weren't going to accept him, either.</p> <p>10 Q Criminal Justice Facility refused to accept Mr. Perry.</p> <p>11 A Mm-hmm.</p> <p>12 Q Per this exhibit, the nurse filled in the narrative</p> <p>13 that he was being rejected because he's bleeding</p> <p>14 profusely from his mouth; she was unsure of the source</p> <p>15 because he had the spit mask on; and he seemed to have</p> <p>16 loose bowels, had a history of seizures, and was taken</p> <p>17 to Sinai earlier in the evening.</p> <p>18 A Mm-hmm.</p> <p>19 Q Is that correct?</p> <p>20 A That's what --</p> <p>21 MS. LAPPEN: I'll just object as to the form</p> <p>22 of the question.</p> <p>23 But go ahead and answer.</p> <p>24 A That's what it says.</p> <p>25 BY MR. GENDE:</p>                                                                                 |
| <p style="text-align: center;">Page 34</p> <p>1 done by the nurse that first assessed Mr. Perry upon</p> <p>2 his arrival --</p> <p>3 A Mm-hmm.</p> <p>4 Q -- at the Criminal Justice Facility. Have you ever</p> <p>5 seen this document before?</p> <p>6 A No.</p> <p>7 Q According to this nurse, and I'm referring to Exhibit</p> <p>8 No. 1, Mr. Perry reported ill or injured. Do you see</p> <p>9 where that checked box that marks --</p> <p>10 A Mm-hmm.</p> <p>11 Q -- that box is checkmarked "Yes"?</p> <p>12 A Yes.</p> <p>13 Q She goes on to say as her narrative that "The inmate</p> <p>14 was bleeding profusely from the mouth. Unsure of</p> <p>15 source because he has the spit mask on."</p> <p>16 A Mm-hmm.</p> <p>17 Q Did I read that correctly into the record?</p> <p>18 A And that's what it says he said, yes.</p> <p>19 Q No. This would be her observations of Mr. Perry</p> <p>20 during the health screening intake.</p> <p>21 A Is that what it is?</p> <p>22 Q Yes, sir.</p> <p>23 A Because it says, "IM." What does that mean, "inmate"?</p> <p>24 Q Inmate, yes.</p> <p>25 A Okay. I thought it meant "I'm." Sorry.</p>                                                                                                                                                                                                                                                                 | <p style="text-align: center;">Page 36</p> <p>1 Q All right. As we sit here today, do you have any</p> <p>2 evidence which disputes what has been documented in</p> <p>3 Exhibit No. 1 as it relates to Mr. Perry bleeding</p> <p>4 profusely from his mouth, unsure of the source because</p> <p>5 he had the spit mask on, and he seemed to have loose</p> <p>6 bowels and had seizures?</p> <p>7 MS. LAPPEN: Object as to the form and the</p> <p>8 foundation of the question.</p> <p>9 But go ahead and answer.</p> <p>10 MR. JONES: Join.</p> <p>11 THE WITNESS: [Addressing Ms. Lappen] What?</p> <p>12 Yeah.</p> <p>13 A No.</p> <p>14 BY MR. GENDE:</p> <p>15 Q In the event that Mr. Perry had been bleeding</p> <p>16 profusely from his mouth or from some other unknown</p> <p>17 source on his body while he was still at PPS, you</p> <p>18 would concede that could constitute a change in</p> <p>19 condition which would suggest a medical emergency,</p> <p>20 correct?</p> <p>21 MS. LAPPEN: I object as to the form and the</p> <p>22 foundation.</p> <p>23 But go ahead and answer.</p> <p>24 A I would suspect that the officers would suffer from</p> <p>25 the same challenge as Mr. Perry, that if he's wearing</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

10 (Pages 37 to 40)

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| <p style="text-align: center;">Page 37</p> <p>1 a spit mask, they might not see what he's reporting.<br/> 2 I don't know. That's not -- my recollection is not<br/> 3 that they reported to me a profusion of blood from his<br/> 4 mouth while he was in the holding facility.<br/> 5 BY MR. GENDE:<br/> 6 Q Sir, I'd like to show you what we've marked as Exhibit<br/> 7 No. 34. This is an incident report prepared by your<br/> 8 detectives relative to an interview done with another<br/> 9 inmate who was present when Mr. Perry was at the<br/> 10 Prisoner Processing Section. Have you ever seen this<br/> 11 document before?<br/> 12 A I believe its contents were reported to me by the<br/> 13 Internal Affairs people.<br/> 14 Q Did you have any reason to dispute the contents of<br/> 15 this report when --<br/> 16 A I'll have to look at it.<br/> 17 MR. GENDE: And for the record, it's the<br/> 18 interview of Tyrone Evans done at 12:20 in the<br/> 19 morning on September 14th, 2010.<br/> 20 A Okay.<br/> 21 Q In reviewing that report, you see that shortly after<br/> 22 Mr. Perry's death, another inmate tells a Milwaukee<br/> 23 Police Department detective that he observed Mr. Perry<br/> 24 being carried in a hog-tied position and then being<br/> 25 dropped on his face before being put in the cell for</p> | <p style="text-align: center;">Page 39</p> <p>1 A Not knowing precisely what wounds were caused, yes.<br/> 2 BY MR. GENDE:<br/> 3 Q Sir, I'm going to show you what we've previously<br/> 4 marked as Exhibit No. 36. This is a continuation of<br/> 5 the critical incident or Internal Affairs<br/> 6 investigation done after Mr. Perry had passed away.<br/> 7 There was an interview done of Andrew J. Puechner, who<br/> 8 was a custodial employee for the Milwaukee Police<br/> 9 Department. He was interviewed by detectives. And<br/> 10 I'm at Bates stamp 60 in the lower right-hand corner,<br/> 11 Chief.<br/> 12 A Where are we?<br/> 13 MS. LAPPEN: What did you say?<br/> 14 MR. GENDE: I'm at Bates stamp -- MPD Bates<br/> 15 stamp 60, lower right-hand corner.<br/> 16 MS. LAPPEN: MPD6....<br/> 17 THE WITNESS: Six-zero or seven-zero?<br/> 18 MR. GENDE: Six-zero.<br/> 19 MS. LAPPEN: We have MPD169, MPD170, MPD171<br/> 20 That's the numbering sequence.<br/> 21 MR. GENDE: May I see the report? And I'll<br/> 22 get you to the page.<br/> 23 THE WITNESS: [Hands document to Mr. Gende]<br/> 24 BY MR. GENDE:<br/> 25 Q Have you seen this incident report yet, Chief?</p>                                                                                        |
| <p style="text-align: center;">Page 38</p> <p>1 observation, true?<br/> 2 MS. LAPPEN: Object as to the form and the<br/> 3 foundation.<br/> 4 But go ahead and answer.<br/> 5 A I know he uses the expression "hog tied." Certainly,<br/> 6 you know, being shackled is not the same as being hog<br/> 7 tied, and the only reason I raise that is hog tied is<br/> 8 a very dangerous thing to do because it can cut off<br/> 9 your breathing.<br/> 10 Shackling your hands and shackling your feet<br/> 11 separately, which is what did occur and can be seen on<br/> 12 the film, is not identical with hog-tying and doesn't<br/> 13 create a breathing hazard that hog-tying would. I do<br/> 14 recall now, looking at this, that the investigation<br/> 15 did indicate that when they put him into his cell that<br/> 16 they did lose control of him and dropped him from a<br/> 17 height of about two feet or so onto the floor.<br/> 18 BY MR. GENDE:<br/> 19 Q You would agree that somebody who was dropped on their<br/> 20 face, who is being carried in the fashion that you've<br/> 21 just described, could result in an individual bleeding<br/> 22 from his head of an unknown origin, true?<br/> 23 MS. LAPPEN: Objection. Form and<br/> 24 foundation. Calls for speculation.<br/> 25 Go ahead and answer.</p>                    | <p style="text-align: center;">Page 40</p> <p>1 A I can't say. I don't know.<br/> 2 Q When Custodian Puechner was interviewed by your<br/> 3 detectives, he stated that when he went into cell A3,<br/> 4 which was the cell Mr. Perry had just been removed<br/> 5 from, he saw there were "gobs of spit, blood, and<br/> 6 fecal matter in the cell on the floor."<br/> 7 A Mm-hmm.<br/> 8 Q Do you see where I've read that?<br/> 9 A Yes.<br/> 10 Q You would agree that Mr. Perry leaving gobs of spit,<br/> 11 blood, and fecal matter on the cell floor where he was<br/> 12 being housed could suggest a change in condition as it<br/> 13 relates to a potential medical emergency, correct?<br/> 14 MS. LAPPEN: Objection as to the form of the<br/> 15 question. It calls for speculation and<br/> 16 foundation as well.<br/> 17 But go ahead and answer.<br/> 18 A Yes.<br/> 19 BY MR. GENDE:<br/> 20 Q Other than Mr. Perry being dropped on his face prior<br/> 21 to being left in the cell for observation, do you have<br/> 22 any evidence as we sit here today what would be the<br/> 23 cause or origin of the gobs of blood that was present<br/> 24 where he had laid before being removed from the cell?<br/> 25 A I don't know. I don't know if this is -- indicates</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

11 (Pages 41 to 44)

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| <p style="text-align: center;">Page 41</p> <p>1 that it was, the blood was connected to his spit,<br/> 2 connected to his fecal matter, or separate, but<br/> 3 certainly it was present.<br/> 4 Q Do you have any evidence or reason to dispute as we<br/> 5 sit here today that Custodian Puechner did not find<br/> 6 gobs of spit, blood, and fecal matter on the cell<br/> 7 floor where Mr. Perry had laid after Mr. Perry was<br/> 8 removed?<br/> 9 MS. LAPPEN: Objection as to the form of the<br/> 10 question.<br/> 11 But go ahead and answer.<br/> 12 A Yeah. I don't think I indicated that I did.<br/> 13 BY MR. GENDE:<br/> 14 Q I'm just asking --<br/> 15 A I accept it at its face, yeah.<br/> 16 Q Based on the internal investigation that was<br/> 17 completed, do you have any information that the blood<br/> 18 found on the floor of Mr. Perry's cell where he lay<br/> 19 after he was removed from the cell was the result of<br/> 20 any act other than him being dropped on his face?<br/> 21 MS. LAPPEN: Objection as to the form of the<br/> 22 question and foundation.<br/> 23 Go ahead and answer.<br/> 24 A Yeah. I don't know.<br/> 25 BY MR. GENDE:</p>                                                                                                                                  | <p style="text-align: center;">Page 43</p> <p>1 A Mm-hmm.<br/> 2 Q Do you see where I read that?<br/> 3 A Whereabouts on the page are we?<br/> 4 Q We are about a quarter of the way down from the top.<br/> 5 A Okay. Yeah. "Diaz-Berg stated she notified the<br/> 6 custodian, who was already at PPS cleaning, there was<br/> 7 blood and the smell of feces in Perry's cell."<br/> 8 Q So you have --<br/> 9 A Right before that she said, "After Perry was removed<br/> 10 from his cell, she observed a blood stain on the cell<br/> 11 floor about the size of a half-dollar and a blood<br/> 12 stain outside of Perry's cell the size of a dime," and<br/> 13 it was then that she called the custodian.<br/> 14 Q So we have a custodian and a police officer observing<br/> 15 blood in the cell where Mr. Perry had been left for<br/> 16 observation. We have an inmate saying he witnessed<br/> 17 Mr. Perry being dropped on his face before he was put<br/> 18 in the cell. Based on that information, would you<br/> 19 expect that your officers should make some inquiry as<br/> 20 to whether or not Mr. Perry was suffering from a<br/> 21 medical emergency?<br/> 22 MS. LAPPEN: Objection as to the form and<br/> 23 the foundation of the question.<br/> 24 Go ahead and answer.<br/> 25 A Well, I can't pretend to have memorized this chain of</p>                                            |
| <p style="text-align: center;">Page 42</p> <p>1 Q Based on your review of the internal investigation as<br/> 2 it relates to Mr. Perry's death, do you have an<br/> 3 opinion as to whether or not Mr. Perry was dropped on<br/> 4 his face before being left in his cell?<br/> 5 MS. LAPPEN: Objection as to the form and<br/> 6 foundation.<br/> 7 But go ahead and answer.<br/> 8 A Yeah. I mean, I don't have an opinion. My<br/> 9 recollection is that that information was in the<br/> 10 Internal Affairs report and that it was not related to<br/> 11 the cause of his death but did occur; that it wasn't<br/> 12 malicious. From time to time people lose control of<br/> 13 prisoners when they're placing them into a cell, and<br/> 14 it had occurred, and it might have caused some injury<br/> 15 that would have resulted in some bleeding. But my<br/> 16 recollection is not that it was seen as related to his<br/> 17 death.<br/> 18 BY MR. GENDE:<br/> 19 Q Let's stay on this page. You also had a police<br/> 20 officer, Diaz-Berg, who was responsible for observing<br/> 21 Mr. Perry while he was in the cell --<br/> 22 A Yeah.<br/> 23 Q -- state to the detectives -- and I'm higher on the<br/> 24 page, Chief -- that she observed a blood stain on the<br/> 25 cell floor of Mr. Perry.</p> | <p style="text-align: center;">Page 44</p> <p>1 events. What I see in front of me is that this blood<br/> 2 stain on the cell floor about the size of a half-<br/> 3 dollar and the blood stain the size of a dime were not<br/> 4 observed until he had been removed from the cell. So<br/> 5 I would say just within the four walls of the report,<br/> 6 nobody saw it until he was taken out of the cell.<br/> 7 Therefore, I don't know that they would say that<br/> 8 was a change in his medical condition. Certainly<br/> 9 dropping him on the floor is not an optimum<br/> 10 circumstance, but as I recall now from the other<br/> 11 report, they continued conversing or talking to him<br/> 12 after that had occurred, so they were observing him at<br/> 13 that time, but I don't know for how long.<br/> 14 BY MR. GENDE:<br/> 15 Q Do you know if Mr. Perry was responsive to any<br/> 16 inquiries once he was put in the cell A3 for<br/> 17 observation?<br/> 18 A I don't know. I wouldn't be surprised if he wasn't<br/> 19 because he was sedated.<br/> 20 Q Are you aware of anything that prevented the officers<br/> 21 who removed Mr. Perry from the cell from observing the<br/> 22 gobs of spit, blood, and fecal matter on the cell<br/> 23 floor where he lay that was ultimately reported by the<br/> 24 custodian, Puechner?<br/> 25 MS. LAPPEN: I object as to the form of the</p> |



# Video Deposition of Chief Edward Flynn 4/2/2014

12 (Pages 45 to 48)

| Page 45                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 47                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <p>1 question.</p> <p>2 But go ahead and answer.</p> <p>3 A It would appear from reading of the report that those</p> <p>4 things weren't visible until he was moved.</p> <p>5 BY MR. GENDE:</p> <p>6 Q In the event that police officers who removed Perry</p> <p>7 from the cell indicated that it was properly lit and</p> <p>8 there was nothing that prevented them from observing</p> <p>9 gobs of blood, spit, and fecal matter where he lay, do</p> <p>10 you have any information as we sit here today that</p> <p>11 would suggest those officers were somehow prevented</p> <p>12 from making this observation?</p> <p>13 MS. LAPPEN: I'll object as to the form and</p> <p>14 misstates prior testimony of other witnesses in</p> <p>15 this case in the context of depositions.</p> <p>16 But go ahead and answer.</p> <p>17 A I really can't say.</p> <p>18 BY MR. GENDE:</p> <p>19 Q Based on all the information available through the</p> <p>20 Internal Affairs investigation, which you expect to be</p> <p>21 thorough and complete, is there any other evidence</p> <p>22 that you're aware of as we sit here today that the</p> <p>23 profuse bleeding documented by the nurse in Exhibit</p> <p>24 No. 1, which resulted in Mr. Perry's refusal at the</p> <p>25 CJF, occurred from some incident other than Mr. Perry</p>                                                                   | <p>1 fecal matter in the cell?</p> <p>2 MS. LAPPEN: Objection as to the form.</p> <p>3 But go ahead and answer.</p> <p>4 A I have no idea if the gobs of blood he observed are</p> <p>5 the same two blood stains that she observed. I don't</p> <p>6 know.</p> <p>7 BY MR. GENDE:</p> <p>8 Q Tell me, based on your review of the internal</p> <p>9 investigation, what your officers did after Mr. Perry</p> <p>10 was returned to PPS and before he was brought into the</p> <p>11 Criminal Justice Facility to determine whether or not</p> <p>12 Mr. Perry was suffering from a change in condition.</p> <p>13 MS. LAPPEN: Object as to form.</p> <p>14 Go ahead and answer.</p> <p>15 A Yeah. I don't know. I know they were trying to</p> <p>16 expedite the paperwork because they had been faced</p> <p>17 with a refusal to admit him to a hospital, and they</p> <p>18 wanted to get into a facility where there was medical</p> <p>19 personnel. So they spent some period of time keeping</p> <p>20 him under some level of observation while they</p> <p>21 attended to the paperwork to get him ready to go to</p> <p>22 CJF.</p> <p>23 BY MR. GENDE:</p> <p>24 Q You have mentioned earlier in your testimony training</p> <p>25 regarding an expected response by Milwaukee police</p>                                                                                                                                                                                                     |
| Page 46                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page 48                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 being dropped on his face before he was left in cell</p> <p>2 A3 for observation?</p> <p>3 MS. LAPPEN: Object --</p> <p>4 MR. JONES: Object --</p> <p>5 MS. LAPPEN: Objection as to form and</p> <p>6 foundation. Calls for speculation.</p> <p>7 MR. JONES: Objection to form.</p> <p>8 A I don't have any information of that sort. I have a</p> <p>9 report filed, apparently two separate reports, one of</p> <p>10 which identifies a half-dollar-size blood stain and a</p> <p>11 dime-size blood stain. I have a report from a nurse</p> <p>12 describing profuse bleeding. I have a circumstance of</p> <p>13 the individual is wearing an expectorant shield the</p> <p>14 whole time that he was being observed by the police.</p> <p>15 So in that context, I have no information that</p> <p>16 indicates that anything happened to him that might</p> <p>17 have caused bleeding, besides either some sort of</p> <p>18 internal issue or being dropped on the floor.</p> <p>19 BY MR. GENDE:</p> <p>20 Q You mentioned the report from the nurse relative to</p> <p>21 profuse bleeding when Mr. Perry arrived at CJF and the</p> <p>22 report from Diaz-Berg about the dollar- and dime-size</p> <p>23 blood spots, but do you also consider the report from</p> <p>24 Custodian Puechner when providing your opinion, where</p> <p>25 Puechner documents he found gobs of spit, blood, and</p> | <p>1 officers to a medical emergency. Are you aware of any</p> <p>2 policy or procedure in how officers are to respond to</p> <p>3 a medical emergency?</p> <p>4 A Well, we have policies that, you know, consist of</p> <p>5 their first aid training, and we have policies that</p> <p>6 indicate when they should call competent medical</p> <p>7 personnel, which in this case is usually the fire</p> <p>8 department. If the fire department is not available,</p> <p>9 then Bell Ambulance. So if they think they're facing</p> <p>10 an emergency, that's what they do, and that obviously</p> <p>11 is what happened at the CJF.</p> <p>12 Q So your understanding of the policy and procedure of</p> <p>13 the Milwaukee Police Department as it relates to your</p> <p>14 subordinates is, if they expect or are concerned an</p> <p>15 inmate under their custody and control is suffering</p> <p>16 from a medical emergency, they are either to call for</p> <p>17 the fire department, an ambulance, take the individual</p> <p>18 to CJF, or take the individual to the emergency room?</p> <p>19 A Well, primarily to get them to an emergency room,</p> <p>20 which I'm hazy now; I think Bell Ambulance transported</p> <p>21 him to the emergency room, if I'm not mistaken. I</p> <p>22 don't precisely recall. But you know, initially, when</p> <p>23 they first had their concerns, they had him</p> <p>24 transported, and that was certainly compliant with</p> <p>25 policy.</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

13 (Pages 49 to 52)

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| <p style="text-align: center;">Page 49</p> <p>1 Q Are you aware as to whether or not any of your<br/>2 officers on the evening in question on duty at PPS had<br/>3 any concern that Mr. Perry was suffering from a<br/>4 medical emergency once he was returned from Mount<br/>5 Sinai?<br/>6 MS. LAPPEN: Object as to the form.<br/>7 But go ahead and answer.<br/>8 A Well, as I've indicated numerous times, it appears by<br/>9 all observations that they saw him as behaving in a<br/>10 way consistent with the administering of a powerful<br/>11 sedative. They had been told by the hospital there<br/>12 was nothing wrong with him, and a powerful sedative<br/>13 had been administered, which put him in a condition<br/>14 that required his carrying. It was based on that<br/>15 information that they continued to perform their<br/>16 duties. They didn't make an independent medical<br/>17 diagnosis. They were responding to what they had been<br/>18 told.<br/>19 BY MR. GENDE:<br/>20 Q So in answer to my prior question, I need some<br/>21 clarification pursuant to policies and procedures for<br/>22 the Milwaukee Police Department. In the event one of<br/>23 your subordinate officers is concerned that an inmate<br/>24 may be suffering from a medical emergency, number one,<br/>25 you would expect that officer to call the fire</p>                              | <p style="text-align: center;">Page 51</p> <p>1 that.<br/>2 And in this event, when he did present in what<br/>3 was undeniably a medical emergency, i.e., having a<br/>4 seizure, they complied with policy and got him to the<br/>5 hospital. When he came back, the things that were<br/>6 presenting to them in their subjective, nonmedical<br/>7 opinion were consistent with what they had been told<br/>8 by competent medical authority. All right?<br/>9 Yes, it was a subjective decision not to seek<br/>10 another ambulance after having just come back from the<br/>11 hospital. Clearly, his death from a heart attack at<br/>12 CJF indicates there was something wrong with him. But<br/>13 in their nonmedical, subjective opinion, after just<br/>14 having been at the hospital, they behaved in a way<br/>15 consistent with that awareness and the sense that his<br/>16 symptoms were not inconsistent with his reaction to<br/>17 the sedative.<br/>18 Q We established earlier in the deposition that you were<br/>19 unaware of any evidence as we sit here today that Mr.<br/>20 Perry had either urinated or defecated on himself<br/>21 prior to being released from the emergency room,<br/>22 correct?<br/>23 A I said I was -- yeah, I was unaware of when that<br/>24 occurred. That's correct.<br/>25 Q Well, we know it didn't occur, or at least you have no</p>                                                                          |
| <p style="text-align: center;">Page 50</p> <p>1 department or an ambulance, correct?<br/>2 A That's correct.<br/>3 Q Two, to get that individual to an emergency room for<br/>4 treatment if there is a concern about a medical<br/>5 emergency, correct?<br/>6 A That's correct.<br/>7 Q Or three, because there's no medical personnel,<br/>8 nurses, or doctors on staff at the Milwaukee Police<br/>9 Department, that individual should be taken to the<br/>10 Criminal Justice Facility because there's nurses on<br/>11 staff there that are better equipped to determine the<br/>12 status of an inmate's health.<br/>13 A If you're, you know, if you have -- well, if somebody<br/>14 is, you know -- Initially, when he was having what<br/>15 apparently was a seizure and the first time he fell<br/>16 down, and I believe it was reported that it was<br/>17 believed he hit his head then too, obviously you're<br/>18 not going to try to take him directly to the CJF.<br/>19 Okay? You want to get him to a hospital.<br/>20 But if he is somebody who has ongoing medical<br/>21 issues that don't elevate to being admitted to the<br/>22 hospital, clearly CJF is a better place for him than<br/>23 PPS because it does have staff. If I'm not mistaken,<br/>24 if somebody is there on medication, you know, they're<br/>25 in a better place to -- position to deal with all of</p> | <p style="text-align: center;">Page 52</p> <p>1 evidence that it occurred prior to him being<br/>2 discharged from the emergency room, correct?<br/>3 A I have no evidence where it occurred period, I think,<br/>4 but it obviously, you know, occurred.<br/>5 Q Do you have any evidence as we sit here today that the<br/>6 bleeding that we have discussed here at the deposition<br/>7 from Mr. Perry occurred while he was at the emergency<br/>8 room or at some point after?<br/>9 A I'm getting in the area of recollection now. You<br/>10 know, my recollection is he had had a seizure and<br/>11 collapsed. Okay? Certainly there could have been<br/>12 some bleeding from that. My recollection is also that<br/>13 blood was reported in the jail cell after he was<br/>14 dropped subsequent to his being moved out of the jail<br/>15 cell, and I am aware now of the report that I just<br/>16 looked at that indicated the nurse observed bleeding.<br/>17 So I know those independent facts.<br/>18 Q When Mr. Perry had to be carried into the PPS after<br/>19 being released from the emergency room, do you have<br/>20 any information that he was bleeding from anywhere on<br/>21 his body?<br/>22 A I'm not entirely sure. I think I have a recollection<br/>23 that there was a wound sustained during his initial<br/>24 seizure, but I can't say that with certainty. And I'm<br/>25 not trying to say that to deny that, you know, he may</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

14 (Pages 53 to 56)

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| <p style="text-align: center;">Page 53</p> <p>1 well have suffered bleeding as a result of being<br/>2 dropped. I'm just -- It's in there somewhere.<br/>3 Q I'm going to submit to you, and of course your counsel<br/>4 can object if I'm incorrect, that in all the Internal<br/>5 Affairs reports that have been produced, there is not<br/>6 one single officer that says Mr. Perry was bleeding<br/>7 when he was brought into PPS.<br/>8 A Okay.<br/>9 Q And based on all the testimony that I've taken thus<br/>10 far, there has not been one individual who said Mr.<br/>11 Perry was bleeding when he was brought into PPS.<br/>12 Let's accept that as true for purposes of my<br/>13 questioning. Okay?<br/>14 A Okay.<br/>15 Q Are you aware that as part of the instruction your<br/>16 officers received when Mr. Perry was discharged and<br/>17 that the strong sedative he received could result in<br/>18 Mr. Perry urinating and defecating on himself?<br/>19 MS. LAPPEN: I'll object as to the form of<br/>20 the question, foundation.<br/>21 Go ahead and answer.<br/>22 A Yeah. I don't know what they were told precisely.<br/>23 BY MR. GENDE:<br/>24 Q But you've provided certain opinions regarding --<br/>25 A Well, I do know that the administration of the</p>                                                                                                                                                           | <p style="text-align: center;">Page 55</p> <p>1 question and the foundation, and it calls for<br/>2 speculation.<br/>3 Go ahead and answer.<br/>4 A Well, first of all, I'm not trying to convey it was<br/>5 just sleeping. He was under the effect of a powerful<br/>6 sedative. Two, I don't know. I'm not the medical<br/>7 authority here. I just know the sequence of events<br/>8 happened directly after having been administered this<br/>9 drug.<br/>10 BY MR. GENDE:<br/>11 Q You would agree that humane treatment of inmates under<br/>12 your custody and control would include being<br/>13 responsive to calls for help, correct?<br/>14 A Yes.<br/>15 Q Do you know if Mr. Perry called for help, after<br/>16 reviewing the tapes of his experience at PPS?<br/>17 A I don't recall.<br/>18 Q Do you know if Mr. Perry was being combative while he<br/>19 was at PPS after the release from the emergency room?<br/>20 A Well, I do know that some of his behaviors were<br/>21 resistant. All right? Whether or not he was fully<br/>22 aware of what he was doing, I don't know, but I do<br/>23 know that some of his behaviors subsequent to getting<br/>24 the drug were described as combative.<br/>25 Q Did Mr. Perry appear to be asleep as officers were</p> |
| <p style="text-align: center;">Page 54</p> <p>1 sedative, they were told, was powerful and he was<br/>2 going to go to sleep. And I do know, based on<br/>3 everything that everybody reported to me, it was<br/>4 almost immediately after being discharged from the<br/>5 hospital, he had been able to walk into the hospital,<br/>6 he was legless coming out of the hospital. I have<br/>7 made the logical leap that there was a direct<br/>8 connection between the sedative and his subsequent<br/>9 physical reaction. And if he's going to sleep, then<br/>10 in going to sleep with a powerful sedative, it's<br/>11 certainly not shocking to me that someone would not<br/>12 have control of their elimination system if they're<br/>13 not capable of, you know, waking or standing or<br/>14 sitting.<br/>15 Q Do you know if your officers were advised that one<br/>16 side effect of the powerful sedative could result in<br/>17 Mr. Perry bleeding from any area of his body?<br/>18 A I don't know that.<br/>19 Q Considering Mr. Perry left the emergency room, based<br/>20 on all the information we have to date in this case,<br/>21 not bleeding from any area of his body and not having<br/>22 urinated and defecated on himself, you would agree<br/>23 that Mr. Perry had a change in condition after his<br/>24 release from the emergency room, not just sleeping.<br/>25 MS. LAPPEN: Objection as to the form of the</p> | <p style="text-align: center;">Page 56</p> <p>1 holding him on the floor of the Prisoner Processing<br/>2 Section?<br/>3 A I would have to review the tape again. I don't<br/>4 recall.<br/>5 Q Based on your best recollection as we sit here today,<br/>6 did it appear that Mr. Perry was asleep while your<br/>7 officers surrounded him at PPS before he was put in<br/>8 cell A3?<br/>9 MS. LAPPEN: Objection as to form and<br/>10 foundation.<br/>11 A Yeah. I mean, I'm going to have to, like, create a<br/>12 memory here. I mean, I -- it's been a long time since<br/>13 I saw the tape.<br/>14 BY MR. GENDE:<br/>15 Q Do you recall Mr. Perry calling for help on the tape?<br/>16 MS. LAPPEN: Objection. Asked and answered.<br/>17 But go ahead and answer.<br/>18 A Yeah. I'd have to review it again.<br/>19 BY MR. GENDE:<br/>20 Q In the event that Mr. Perry was calling out for help,<br/>21 would you expect your officers to respond to that?<br/>22 A Well, it depends on --<br/>23 MS. LAPPEN: Objection as to form and<br/>24 foundation.<br/>25 But go ahead and answer.</p>                                                                                                                                                                                 |

# Video Deposition of Chief Edward Flynn 4/2/2014

15 (Pages 57 to 60)

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| <p style="text-align: center;">Page 57</p> <p>1 A It depends on the circumstances. I mean, if they're<br/> 2 in a situation -- I mean, again, I don't want to have<br/> 3 recovered memory here. If we're in a situation with<br/> 4 somebody who is acting in a combative manner, whether<br/> 5 it's because they are actually actively being<br/> 6 combative or because something is going on inside<br/> 7 their head that's making them flail about and the<br/> 8 officers don't know what it is, and both things can<br/> 9 happen, the officers are going to try to control that<br/> 10 individual. Sometimes people in a circumstance of<br/> 11 somewhat delirium are calling for help as they're<br/> 12 fighting the police. This is not unknown to us. The<br/> 13 challenge for us in those circumstances is to gain<br/> 14 control of the prisoner and create a circumstance in<br/> 15 which they can't injure themselves and they can't<br/> 16 injure us.<br/> 17 And so it's certainly, you know, not beyond my<br/> 18 experience where somebody who is actively fighting the<br/> 19 police is also calling for help, because they don't<br/> 20 exactly know what's going on. But we have to act in<br/> 21 sequence. First is calm the threat down. Nobody is<br/> 22 going to get hurt. Then we deal with whatever the<br/> 23 circumstance is of that individual, if they have<br/> 24 medical problems or mental problems.<br/> 25 BY MR. GENDE:</p>                                         | <p style="text-align: center;">Page 59</p> <p>1 the strong sedatives that he received, did you expect<br/> 2 your officers to make a determination whether or not<br/> 3 Mr. Perry suffered from a change in condition?<br/> 4 MS. LAPPEN: Objection as to the form of the<br/> 5 question.<br/> 6 But go ahead and answer.<br/> 7 A What I expected them to do is respond in a manner<br/> 8 consistent with policy, consistent with their<br/> 9 training, and consistent with what they'd been just<br/> 10 told by competent medical authority.<br/> 11 BY MR. GENDE:<br/> 12 Q Which is what?<br/> 13 A They had just been told by competent medical authority<br/> 14 that, A, there was nothing wrong him, and B, he was<br/> 15 faking, and C, we've given him a powerful sedative.<br/> 16 Q That was a poor question. What did you expect them to<br/> 17 do consistent with the policy and procedure?<br/> 18 A I expected them to create a circumstance in which he<br/> 19 couldn't harm himself, that he couldn't be a threat<br/> 20 for others, and that we get him processed to CJF as<br/> 21 expeditiously as possible.<br/> 22 (Exhibit 69 identified)<br/> 23 Q Chief, I'm going to show you what we've marked as<br/> 24 Exhibit No. 69. This is a transcript that was<br/> 25 prepared based on an interview with a local media</p> |
| <p style="text-align: center;">Page 58</p> <p>1 Q Let's try and focus on Mr. Perry's situation where we<br/> 2 have a known set of circumstances and we have video of<br/> 3 it. And I will represent to you that on the video Mr.<br/> 4 Perry is calling for help as your police officers<br/> 5 surround him. Based on what we know to date as it<br/> 6 relates to Mr. Perry, his prior emergency room visit,<br/> 7 his strong sedative that had been given, his inability<br/> 8 to walk of his own accord, as he calls out for help,<br/> 9 would you expect your officers to respond to that in<br/> 10 any way, shape, or form?<br/> 11 A I would expect for them first to get the situation<br/> 12 under physical control.<br/> 13 Q Did it appear to you in review of the tape that Mr.<br/> 14 Perry was not under control?<br/> 15 A Well, that's, as I said, I have not seen the tape in a<br/> 16 couple of years, so I don't recall.<br/> 17 Q Do you recall hearing Mr. Perry call out that the<br/> 18 officers were killing him as they surrounded him on<br/> 19 the floor of the Prisoner Processing Section?<br/> 20 A I don't recollect what he said. I do not recollect<br/> 21 seeing a tape that indicated that that was occurring.<br/> 22 Q In the event that Mr. Perry was calling out for help<br/> 23 and calling out that the officers were killing him,<br/> 24 and in consideration of his release from the emergency<br/> 25 room, his inability to walk under his own power, and</p> | <p style="text-align: center;">Page 60</p> <p>1 outlet, and the transcript was prepared by Magne-<br/> 2 Script Court Reporting. Do you recall providing a<br/> 3 interview as it relates to Mr. Perry on or about<br/> 4 October 30th, 2012?<br/> 5 A Yeah. But I don't remember with who.<br/> 6 MS. LAPPEN: Just for the record, I'm going<br/> 7 to object to any questioning relative to this<br/> 8 transcript. I don't believe we were provided a<br/> 9 copy of it prior to the deposition.<br/> 10 MR. GENDE: I don't know that I have to<br/> 11 provide my exhibits prior to deposition. It's a<br/> 12 document that we got online, publicly<br/> 13 disseminated.<br/> 14 MS. LAPPEN: This transcript was publicly<br/> 15 disseminated?<br/> 16 MR. GENDE: The interview was publicly<br/> 17 disseminated.<br/> 18 MS. LAPPEN: Oh.<br/> 19 BY MR. GENDE:<br/> 20 Q Why don't you take a moment to read through the<br/> 21 transcript, and I have some questions that I'm going<br/> 22 to ask you.<br/> 23 MR. GENDE: Let's go off the record at<br/> 24 11:14?<br/> 25 THE REPORTER: Okay. Off the record.</p>                                                                                                                                                                                                                            |



# Video Deposition of Chief Edward Flynn 4/2/2014

16 (Pages 61 to 64)

| Page 61                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 63                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <p>1 (Off the record 11:12 - 11:19)</p> <p>2 THE REPORTER: We're back on the record.</p> <p>3 BY MR. GENDE:</p> <p>4 Q Chief, we've taken an opportunity to have you review</p> <p>5 what we've marked as Exhibit No. 69, which appears to</p> <p>6 be an interview that you gave as it relates to Mr.</p> <p>7 Perry's in-custody death. Do you deny making any of</p> <p>8 the statements that are contained in this exhibit?</p> <p>9 MS. LAPPEN: I'm just going to object</p> <p>10 because this is -- doesn't appear to be a</p> <p>11 complete transcript of interview as the chief</p> <p>12 noted in his review. It doesn't reflect the</p> <p>13 questions that were posed to the chief.</p> <p>14 But subject to those objections, go ahead</p> <p>15 and answer.</p> <p>16 A I mean, I have no reason not to believe it. Most of</p> <p>17 these statements look consistent with representations</p> <p>18 I've made today.</p> <p>19 BY MR. GENDE:</p> <p>20 Q Okay. Looking at page 3, you state that you made an</p> <p>21 assessment of what you've seen on the tapes and the</p> <p>22 reports that you reviewed or that the officers</p> <p>23 followed departmental policy, correct?</p> <p>24 A That's correct.</p> <p>25 Q So at the time you made that statement, had you</p>                                                                                          | <p>1 A That's correct.</p> <p>2 Q And you agree that supervisors can influence their</p> <p>3 subordinates based on how they lead, correct?</p> <p>4 A Theoretically, yes.</p> <p>5 Q Well, theoretically and practically, you expect that</p> <p>6 your supervisors influence their subordinates, true?</p> <p>7 A That's true. And when they do so in a way that's</p> <p>8 unprofessional, they're disciplined, as occurred here.</p> <p>9 Q What information do you have as we sit here today that</p> <p>10 your lieutenant's comment while Mr. Perry was on the</p> <p>11 floor of the Prisoner Processing Section, surrounded</p> <p>12 by police officers, and your lieutenant said in front</p> <p>13 of these subordinates that if you're going to act like</p> <p>14 an animal, we'll treat you like you're in prison, did</p> <p>15 not have an effect on these subordinates?</p> <p>16 MS. LAPPEN: Objection to the form of the</p> <p>17 question. It does misstate the statement.</p> <p>18 But go ahead and answer.</p> <p>19 A Well, without getting into semantics, if he said,</p> <p>20 "We're going to treat you like you're in prison," I</p> <p>21 don't precisely know what you mean by that. I mean,</p> <p>22 he was treated like he was at the prisoner processing</p> <p>23 facility. He was appropriately restrained, he was</p> <p>24 watched. When he needed medical treatment in</p> <p>25 everybody's view, he received medical treatment. When</p> |
| Page 62                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 64                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1 actually reviewed the tapes and the reports at issue?</p> <p>2 A Well, this is October of 2012, which I guess is about</p> <p>3 two and a half years after the incident. I believe by</p> <p>4 that time I had seen the final reports.</p> <p>5 Q Considering Lieutenant Robbins, the supervisor at PPS</p> <p>6 on the evening Mr. Perry passed away, had stated words</p> <p>7 to the effect in front of his subordinates that if Mr.</p> <p>8 Perry was going to act like an animal, he'd be treated</p> <p>9 like a -- like he was in prison, is it your opinion</p> <p>10 that policies and procedures in that regard were</p> <p>11 followed?</p> <p>12 MS. LAPPEN: Object as to the form of the</p> <p>13 question.</p> <p>14 But go ahead and answer.</p> <p>15 A Listen, that's a self-evident answer. I certainly</p> <p>16 wasn't responding to Lieutenant Robbins's</p> <p>17 inappropriate behavior. I was talking of the behavior</p> <p>18 of the officers who had been charged with moving this</p> <p>19 prisoner about and processing him.</p> <p>20 BY MR. GENDE:</p> <p>21 Q So when you made this comment about the officers</p> <p>22 following departmental policy and procedure as it</p> <p>23 relates to Mr. Perry, that was not in association with</p> <p>24 the inhumane comment made by your supervisor on the</p> <p>25 night in question, correct?</p> | <p>1 that medical treatment evaluated him and sent him back</p> <p>2 to us, paperwork was expedited to get him to CJF.</p> <p>3 So, you know, I would not expect his statement to</p> <p>4 induce the officers to do something outside of policy,</p> <p>5 and we found nothing in our investigation that</p> <p>6 indicated that his comments had any impact on their</p> <p>7 compliance with relevant policies.</p> <p>8 BY MR. GENDE:</p> <p>9 Q Is it policy and procedure to drop inmates on their</p> <p>10 face and not report it?</p> <p>11 A It's not policy to accidentally do anything.</p> <p>12 Q In the event that an inmate is dropped on his face,</p> <p>13 either accidentally or intentionally, would you expect</p> <p>14 your officers to report that?</p> <p>15 A Well, in the event, as this transpired, obviously this</p> <p>16 was reported, but clearly it's -- if we do something</p> <p>17 that causes an injury, we're expected to make a</p> <p>18 report.</p> <p>19 Q And in the event that your officers failed to report</p> <p>20 it, is that within policy and procedures? And when I</p> <p>21 say "it," I'm talking about their conduct that</p> <p>22 resulted in Mr. Perry being dropped on his face before</p> <p>23 put on the cell floor of A3.</p> <p>24 MS. LAPPEN: Objection as to the form of the</p> <p>25 question.</p>                                                                                                            |

# Video Deposition of Chief Edward Flynn 4/2/2014

17 (Pages 65 to 68)

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| <p style="text-align: center;">Page 65</p> <p>1 But go ahead --</p> <p>2 A Yeah. I think context is important here. When we</p> <p>3 have a circumstance, and this had been the only thing</p> <p>4 that happened -- they dropped him on his face and he</p> <p>5 needed medical attention, and everything else had been</p> <p>6 fine and he got admitted to the hospital -- and they</p> <p>7 would obviously, if they hadn't reported it, would</p> <p>8 have been in jeopardy of discipline.</p> <p>9 It's hard for me looking back now in the context</p> <p>10 of what ultimately happened, which is a death in</p> <p>11 custody and a complete investigation of everything</p> <p>12 that occurred, I don't know that anybody was thinking</p> <p>13 of filing a separate report about this incident</p> <p>14 because everything that occurred to him was part of</p> <p>15 the investigation in chief. So I really can't</p> <p>16 disaggregate that right now.</p> <p>17 BY MR. GENDE:</p> <p>18 Q Starting at line 20 of page 3, you made a comment,</p> <p>19 "The officers at the hospital said they thought</p> <p>20 something more was wrong with him, and after continued</p> <p>21 conference, the medical personnel themselves said to</p> <p>22 the officers, their words, not ours, 'We think he's</p> <p>23 faking it.'"</p> <p>24 A Mm-hmm.</p> <p>25 Q Or "We think he's faking." Is that an accurate</p> | <p style="text-align: center;">Page 67</p> <p>1 Q I think you misspoke, and generally I don't attempt to</p> <p>2 correct misstatements, but you said your officers took</p> <p>3 him back to the emergency room.</p> <p>4 A Yeah, that's not what I meant, yeah.</p> <p>5 Q Okay. So just to be clear --</p> <p>6 A They took him back to the jail.</p> <p>7 Q They took him back to the jail.</p> <p>8 A Mm-hmm.</p> <p>9 Q Despite the fact that they were concerned, your</p> <p>10 officers were concerned that he didn't appear right</p> <p>11 and appeared to be suffering from a medical condition</p> <p>12 that required more care.</p> <p>13 A They'd just been overruled by the doctors.</p> <p>14 Q Fair enough. They're overruled by the doctors, and</p> <p>15 according to your statement, medical personnel said,</p> <p>16 "He's faking it," right?</p> <p>17 A Right.</p> <p>18 Q My question is, based on your officers' concern, based</p> <p>19 on the input they got from the medical staff that</p> <p>20 allegedly the medical staff said, "He's faking it,"</p> <p>21 can you describe for me at that point forward and</p> <p>22 prior to Mr. Perry's death what any officer under your</p> <p>23 command and control did to distinguish whether Mr.</p> <p>24 Perry was faking his symptoms or was suffering from a</p> <p>25 change in condition that constituted a medical</p>                                      |
| <p style="text-align: center;">Page 66</p> <p>1 reflection of the statements you made on the date in</p> <p>2 question?</p> <p>3 A It's an accurate reflection of my understanding at</p> <p>4 that time, yes.</p> <p>5 Q Okay. Has your understanding changed?</p> <p>6 A Not significantly, no.</p> <p>7 Q In what manner has it changed?</p> <p>8 A I, you know, I'm just -- You asked me a question.</p> <p>9 This is what I was thinking at the time.</p> <p>10 Q What, if anything, did your officers do after Mr.</p> <p>11 Perry was released, and based on their concern that he</p> <p>12 was still having problems, to distinguish whether or</p> <p>13 not he continued to suffer from a medical condition or</p> <p>14 he was faking his symptoms?</p> <p>15 A What they did was convey an increasingly incoherent</p> <p>16 subject back to the hospital as he reacted to the</p> <p>17 medication that the hospital had given him. So when</p> <p>18 he was unable to walk, they carried him. When he was</p> <p>19 unable to get himself to his cell, they ended up, you</p> <p>20 know, conveying him to the cell in handcuffs and leg</p> <p>21 cuffs. When he expectorated, they put an expectorant</p> <p>22 shield on him. They simply responded to the</p> <p>23 appearances of someone who had -- was under the effect</p> <p>24 of a sedative and just been released from medical</p> <p>25 custody.</p>   | <p style="text-align: center;">Page 68</p> <p>1 emergency?</p> <p>2 MS. LAPPEN: Objection as to form and</p> <p>3 foundation.</p> <p>4 But go ahead and answer.</p> <p>5 A I think we're in a situation in which officers are</p> <p>6 forced to confront with just the simple reality that's</p> <p>7 in front of them. Again, this is all contextual, and</p> <p>8 given their attempts to get him admitted, given the</p> <p>9 fact that the hospital, in fact, said there was</p> <p>10 nothing wrong with him, they were then presented with</p> <p>11 somebody who was behaving in a certain way.</p> <p>12 How much of that was the direct result of his</p> <p>13 sedative? I'm sure a lot of it was. What percentage</p> <p>14 of it theoretically might be related to somebody</p> <p>15 "faking," who didn't want to be in jail and would</p> <p>16 prefer to be in a hospital, we don't know. They</p> <p>17 simply had this circumstance they had to deal with</p> <p>18 that the hospital wanted nothing to do with, and we</p> <p>19 would subsequently find out the jail wanted nothing to</p> <p>20 do with.</p> <p>21 So it appears that the entire world of people</p> <p>22 with medical training wanted to dump this in the lap</p> <p>23 of the police department. All right? We're between a</p> <p>24 rock and a hard place here. The cops knew they had a</p> <p>25 prisoner who was evincing some level of combative</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

18 (Pages 69 to 72)

| Page 69                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 71                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1 behavior for reasons unknown entirely to them, that<br/>2 had been rejected by the hospital, for whom they were<br/>3 responsible to get to CJF, and that was basically the<br/>4 four walls of their concern between the time the<br/>5 hospital refused to admit him and their getting the<br/>6 paperwork completed to get him to the CJF.<br/>7 BY MR. GENDE:<br/>8 Q That's a fairly involved answer that I believe is<br/>9 nonresponsive to the question. I know you've<br/>10 expressed opinions that the police department did<br/>11 everything they could do under the circumstances, and<br/>12 you've just told me they were placed in a -- between a<br/>13 rock and a hard place.<br/>14 But I'd like you to tell me as distinctly as<br/>15 possible what you understand your officers did, what<br/>16 actions they took after Mr. Perry was released from<br/>17 the emergency room and before he passed away at the<br/>18 Criminal Justice Facility, to distinguish between<br/>19 their concerns that he continued to suffer from a<br/>20 medical emergency, or that he was faking it, as<br/>21 allegedly said by hospital personnel.<br/>22 MS. LAPPEN: Objection to the form. I think<br/>23 the question was asked and answered.<br/>24 But go ahead and answer it.<br/>25 A Well, I just -- It's difficult to be responsive to</p> | <p>1 man to the hospital. We all know what didn't happen<br/>2 at the hospital. When he came back, now, based on<br/>3 their first experience with his condition and the<br/>4 medical opinions, yes, they made observations.<br/>5 Challenges to their observations confound what they've<br/>6 been told by the doctors, and I don't think it arose<br/>7 in their opinion to a level where they got to go back<br/>8 to the hospital now with the same individual who had<br/>9 just been rejected.<br/>10 Q Here's the problem with the position that I've heard<br/>11 thus far. First, you're telling me that your officers<br/>12 are acting in accord with information they received<br/>13 from the emergency room personnel that Mr. Perry is<br/>14 faking it.<br/>15 A Mm-hmm.<br/>16 Q Correct?<br/>17 A And the administration of a strong drug.<br/>18 Q Secondly, you have testified here today that Mr. Perry<br/>19 was given a strong sedative, and therefore all of the<br/>20 conduct or actions he exhibited were expected by your<br/>21 personnel, right?<br/>22 A I don't believe I said "expected." I think I said<br/>23 consistent with their understanding of what might<br/>24 happen with this drug.<br/>25 Q So tell me how your officers reconciled what they,</p>              |
| Page 70                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 72                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 that question because I don't expect officers to<br/>2 conduct a controlled medical experiment on a prisoner<br/>3 in their custody. What do they do to distinguish if<br/>4 he's faking or has a medical condition? I don't know<br/>5 that anybody has the answer for that question.<br/>6 BY MR. GENDE:<br/>7 Q Let me --<br/>8 A They had -- They've been told something by medical<br/>9 personnel. Okay? They're acting on the belief of<br/>10 what they have been told. They may have their<br/>11 concerns, but they just lost that argument. They're<br/>12 not the doctors.<br/>13 Q So your officers have concerns. Are your officers<br/>14 able to observe and make decisions based on<br/>15 observations?<br/>16 A Again, are the observations consistent with somebody<br/>17 under a strong sedative who may or may not be faking,<br/>18 or not? I can't say. I wasn't in their shoes. They<br/>19 were making a subjective judgment based on what they<br/>20 had been told.<br/>21 Q My question, Chief, is whether or not you expect your<br/>22 officers to be able to observe and make decisions<br/>23 based on their observations?<br/>24 A I think they did that twice. First time they did it,<br/>25 they did it with a medical seizure and they took the</p>                                                                    | <p>1 according to your testimony, believe was consistent<br/>2 with a strong sedative of a change in condition as<br/>3 opposed to what may be occurring with Mr. Perry as it<br/>4 relates to a medical emergency.<br/>5 MS. LAPPEN: Objection as to form. It does<br/>6 call for speculation.<br/>7 Go ahead and answer.<br/>8 MR. GENDE: But he's the chief.<br/>9 Q So, and you reviewed everything.<br/>10 A Yeah. I'm the chief. I'm not the director of<br/>11 internal medicine of the Milwaukee Police Department.<br/>12 All right? They were operating under observation and<br/>13 belief. They had just tried to get him medical<br/>14 attention for what they thought was something wrong<br/>15 with him.<br/>16 The people that made the informed judgment, who<br/>17 apparently aren't accountable for their judgment,<br/>18 turned him back over to the police department with the<br/>19 administration of a drug and with an observation. The<br/>20 observation of our officers now is somebody who is not<br/>21 necessarily having a seizure or a stroke or a heart<br/>22 attack. He is having a number of responses that<br/>23 reasonable people without medical training but first<br/>24 aid training might not see as inconsistent with what<br/>25 they had just been told.</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

19 (Pages 73 to 76)

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| <p style="text-align: center;">Page 73</p> <p>1 That was the circumstance in which they were<br/> 2 placed. And in that circumstance, their goal was to<br/> 3 keep him from harming himself, keep him from harming<br/> 4 anybody else, and get him to CJF. Now, the benefit of<br/> 5 hindsight, we all wish better outcomes had occurred,<br/> 6 but in their four walls of what they knew when, they<br/> 7 were the ones who had been given somebody by medical<br/> 8 authorities who had cleared him.<br/> 9 Q Had cleared him with discharge instructions, correct?<br/> 10 A Well, they had cleared him and administered him a<br/> 11 sedative. I don't recall what the instructions were.<br/> 12 Q You understand that when a inmate who is a patient at<br/> 13 an emergency room is released, discharge instructions<br/> 14 are provided for that inmate, correct? You understand<br/> 15 that, sir?<br/> 16 A Well, my understanding is, you know, it depends on the<br/> 17 patient and on the diagnosis.<br/> 18 Q Would you ever expect that a individual that your<br/> 19 officers take to the emergency room for treatment and<br/> 20 care would be discharged without some instructions?<br/> 21 A I don't know.<br/> 22 Q I'm going to show you what we've marked as Exhibit No.<br/> 23 28, which are certified medical records from Mount<br/> 24 Sinai as it relates to Mr. Perry.<br/> 25 MS. LAPPEN: Are you done with the</p> | <p style="text-align: center;">Page 75</p> <p>1 they received these instructions when Mr. Perry was<br/> 2 discharged. So --<br/> 3 A Again, my numbers don't comport with yours. My number<br/> 4 25 says, "We thank you for allowing us to assist you<br/> 5 with your health care needs." Is that where you are?<br/> 6 Q Let me try and find it for you in the exhibit. Yep.<br/> 7 That's exactly where I'm at, Chief.<br/> 8 A That's where you're at? Okay.<br/> 9 Q That's where I'm at. It says "Patient Education"<br/> 10 towards the top, and it says "Aurora Health Care." It<br/> 11 identifies Mr. Perry and the visit date. Do you see<br/> 12 that?<br/> 13 A Yes.<br/> 14 Q If we move on to page 27, it says, "Mr. Perry has been<br/> 15 given a list of follow-up instructions, medication<br/> 16 information, and patient education materials." Do you<br/> 17 see where I read that?<br/> 18 A Mm-hmm. Yep.<br/> 19 Q Now, we know Mr. Perry didn't receive it because he<br/> 20 wasn't capable of taking care of his own medical care.<br/> 21 That information would have been provided to your<br/> 22 police officers, true?<br/> 23 A True.<br/> 24 Q And you would expect that once your police officers<br/> 25 received that information, they would provide it to</p> |
| <p style="text-align: center;">Page 74</p> <p>1 transcript?<br/> 2 MR. GENDE: No. You can leave that open.<br/> 3 Q You understand that Mr. Perry was unable to address<br/> 4 his own medical concerns on the evening in question<br/> 5 because he was in the custody of the Milwaukee Police<br/> 6 Department, true?<br/> 7 MS. LAPPEN: Objection as to the form of the<br/> 8 question, and foundation.<br/> 9 A I don't really know what -- what do you mean?<br/> 10 BY MR. GENDE:<br/> 11 Q Well, Mr. Perry wasn't free to leave and seek out his<br/> 12 own medical assistance, was he?<br/> 13 A No, that's true.<br/> 14 Q Mr. Perry did not have an option as to which emergency<br/> 15 room he would be taken to, correct?<br/> 16 A That's correct.<br/> 17 Q He did not have any input on what doctors or nurses<br/> 18 would treat him, true?<br/> 19 A True.<br/> 20 Q Those decisions were made by Milwaukee Police<br/> 21 Department on the evening in question, right?<br/> 22 A That's correct.<br/> 23 Q At Bates 00025 of this exhibit are patient education<br/> 24 instructions for Mr. Perry, and I will represent to<br/> 25 you that your transporting officers testified that</p>                                                                                                                                                                                                                                           | <p style="text-align: center;">Page 76</p> <p>1 your supervisor at PPS so he would know how Mr. Perry<br/> 2 should be handled in accord with his discharge<br/> 3 instructions, true?<br/> 4 A That's correct.<br/> 5 Q Would there be some other individual other than the<br/> 6 supervisor, Lieutenant Robbins, that should receive<br/> 7 these discharge instructions from the emergency room<br/> 8 as it relates to Mr. Perry?<br/> 9 MS. LAPPEN: Objection as to form.<br/> 10 But go ahead and answer.<br/> 11 A Yeah. I don't think so.<br/> 12 BY MR. GENDE:<br/> 13 Q On page 29 of this exhibit --<br/> 14 A Mm-hmm.<br/> 15 Q -- it talks about home care for Mr. Perry as it<br/> 16 relates to potential subsequent seizure activity. We<br/> 17 know that Mr. Perry wasn't released to his home,<br/> 18 correct?<br/> 19 A That's correct.<br/> 20 Q All right. Do you know if any of your officers<br/> 21 advised themselves of the discharge instructions as it<br/> 22 relates to potential additional seizure activity for<br/> 23 Mr. Perry?<br/> 24 MS. LAPPEN: Objection as to form.<br/> 25 A I have no reason not to.</p>                                                                                                                                                  |



# Video Deposition of Chief Edward Flynn 4/2/2014

20 (Pages 77 to 80)

| Page 77                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 79                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p>1 BY MR. GENDE:<br/>2 Q Let's move on to page 31. "Get prompt medical<br/>3 attention." Do you see where that is at the top of<br/>4 the page? Under "Patient Education"? It's in capital<br/>5 letters in bold?<br/>6 A Yeah. Okay.<br/>7 Q You would expect that not only the transporting<br/>8 officers who received these discharge instructions<br/>9 would be advised of the information contained therein,<br/>10 but the supervisor would further advise himself, true?<br/>11 A I would suspect so.<br/>12 Q You would expect so, correct?<br/>13 A Yeah. Mm-hmm.<br/>14 Q Do you know if your transporting officers or<br/>15 Lieutenant Robbins advised themselves of these<br/>16 specific instructions related to Mr. Perry, that he<br/>17 should get prompt medical attention in the event these<br/>18 conditions occur?<br/>19 MS. LAPPEN: Objection as to the form of the<br/>20 question, and foundation.<br/>21 But go ahead and answer.<br/>22 BY MR. GENDE:<br/>23 Q The question is, do you know? You can tell me you<br/>24 don't.<br/>25 A Yeah. I don't know.</p>                                                                                                                                                                                                                           | <p>1 injury during a seizure; fever over 100 degrees<br/>2 Fahrenheit." Well, we didn't take his temperature.<br/>3 "Unusual irritability, drowsiness, or confusion," but<br/>4 again, the drowsiness or confusion, he'd just been<br/>5 given a sedative. So everything here seems to refer<br/>6 to them observing seizures.<br/>7 Q Chief, I don't want to keep you longer than necessary,<br/>8 but I'm asking specific questions.<br/>9 A That's not a specific answer?<br/>10 Q Well, I'll have to ask it again, because I don't<br/>11 believe it is specific.<br/>12 A Okay.<br/>13 Q I'm asking you under "Get prompt medical attention" --<br/>14 A Right.<br/>15 Q -- where it states that medical personnel should be<br/>16 contacted only in the event that there's a subsequent<br/>17 seizure?<br/>18 A Well, I just read the list. I mean, it doesn't say<br/>19 "only." It simply refers to seizures in almost every<br/>20 entry.<br/>21 Q Pursuant to the discharge instructions, in the event<br/>22 that Mr. Perry remained confused for more than 30<br/>23 minutes after a seizure, he was to receive prompt<br/>24 medical attention, correct?<br/>25 A That's correct.</p>                                   |
| Page 78                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 80                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1 Q In the event that Mr. Perry remained confused for more<br/>2 than 30 minutes after a seizure, it was recommended<br/>3 per discharge instructions that he get prompt medical<br/>4 attention, right?<br/>5 A That's correct.<br/>6 Q Do you know if Mr. Perry was coherent when he was<br/>7 brought into PPS?<br/>8 A I don't know that we can disaggregate the impact of<br/>9 the sedative on him from what's being asserted here.<br/>10 Q And how would your officers do that?<br/>11 A Well, I mean --<br/>12 Q In the event that he were --<br/>13 A -- they'd just been told he had been given a sedative<br/>14 that was going to put him to sleep. He was losing<br/>15 control of his arms and legs in their custody. He was<br/>16 not, from my understanding, exhibiting the seizure<br/>17 behavior they had seen initially, which prompted them<br/>18 to take him to the emergency room in the first place.<br/>19 Q Does this discharge instruction say, "Only get prompt<br/>20 medical attention in the event another seizure<br/>21 occurs"?<br/>22 A "If any of the following occurs: seizures occurring<br/>23 more often or becoming longer; seizure lasting over<br/>24 five minutes; no wake-up between seizures; remaining<br/>25 confused for more than 30 minutes after a seizure;</p> | <p>1 Q Now, I'm asking you as we sit here today -- and if you<br/>2 don't know, you can tell me you don't know -- was Mr.<br/>3 Perry coherent when he was brought back into PPS?<br/>4 A Implicitly that's a two-pronged question. All right?<br/>5 No, he was not coherent, but there's no testimony or<br/>6 evidence that I am aware of that anybody saw him have<br/>7 a seizure then. He had been administered a drug.<br/>8 That's what we knew.<br/>9 Q You understood that Mr. Perry was exhibiting signs of<br/>10 being resistant, correct?<br/>11 A That is true.<br/>12 Q That could also be considered unusual irritability,<br/>13 right?<br/>14 A That could be.<br/>15 Q Mr. Perry was exhibiting signs of drowsiness and<br/>16 confusion as well, true?<br/>17 A True.<br/>18 Q And pursuant to these instructions when Mr. Perry<br/>19 should get prompt medical attention, in the event that<br/>20 he exhibited unusual irritability, drowsiness, or<br/>21 confusion, he should get prompt medical attention,<br/>22 right?<br/>23 A That is one of the things on the list, but I feel<br/>24 obligated to add that in the context of what was<br/>25 occurring that evening, somebody who is being drowsy</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

21 (Pages 81 to 84)

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| <p style="text-align: center;">Page 81</p> <p>1 or confused after having gotten a sedative is not<br/> 2 something that automatically would have leapt out as a<br/> 3 serious medical condition. And certainly in the<br/> 4 context of being in a prisoner processing facility,<br/> 5 somebody being irritable is not something unknown to<br/> 6 officers in that context.<br/> 7 Q I'd like to show you what we've marked as Exhibit No.<br/> 8 53 previously, provided by the Milwaukee Police<br/> 9 Department in response to discovery requests. It's a<br/> 10 paradigm shift. Are you familiar with this document?<br/> 11 A I'm aware of it; I'm not familiar with it.<br/> 12 Q Do you know when this paradigm shift was created as<br/> 13 part of Milwaukee Police Department training?<br/> 14 A No.<br/> 15 Q Okay. On the bottom it's got a copyright of 2005.<br/> 16 Would that suggest to you that the paradigm shift<br/> 17 occurred in 2005?<br/> 18 A I'm not trying to be argumentative. That's when it<br/> 19 was copyrighted. I don't know when the shift in<br/> 20 training occurred.<br/> 21 Q The paradigm shift that we're referring to states,<br/> 22 "Struggling and resistance can indicate an immediate<br/> 23 medical emergency and not a criminal act." Do you see<br/> 24 where I read that? It's right at the top of the page,<br/> 25 Chief.</p> | <p style="text-align: center;">Page 83</p> <p>1 his arrival at the Prisoner Processing Section?<br/> 2 MS. LAPPEN: Objection to the form of the<br/> 3 question and foundation.<br/> 4 A Yes, they did not get him any new medical attention.<br/> 5 BY MR. GENDE:<br/> 6 Q And tell me what you understand they did to<br/> 7 distinguish whether he was faking what we've<br/> 8 previously discussed or that he needed prompt medical<br/> 9 attention because he exhibited unusual irritability,<br/> 10 drowsiness, or confusion. What did they do to<br/> 11 distinguish those?<br/> 12 MS. LAPPEN: Objection as to the form and<br/> 13 foundation.<br/> 14 Go ahead and answer.<br/> 15 BY MR. GENDE:<br/> 16 Q If anything, Chief.<br/> 17 A They didn't do anything to distinguish those two<br/> 18 things.<br/> 19 Q Do you think that your officers lacked the information<br/> 20 and training on the date in question to follow<br/> 21 emergency room discharge instructions?<br/> 22 A No, I do not.<br/> 23 Q Do you think your officers lacked training to<br/> 24 understand the paradigm shift that struggling and<br/> 25 resistance can indicate an immediate medical emergency</p> |
| <p style="text-align: center;">Page 82</p> <p>1 A Yes.<br/> 2 Q Do you disagree with that training for the Milwaukee<br/> 3 Police Department?<br/> 4 A No.<br/> 5 Q Do you have any information that this paradigm shift<br/> 6 was not in effect at the time Mr. Perry passed away?<br/> 7 A No.<br/> 8 Q Did you expect your police officers to be conversant<br/> 9 with this paradigm shift, understand it, implement it?<br/> 10 A Yes.<br/> 11 Q So we have discharge instructions that you expect your<br/> 12 transporting officers and supervisor to follow; and as<br/> 13 part of those discharge instructions, it requires that<br/> 14 Mr. Perry get prompt medical attention in the event he<br/> 15 shows unusual irritability, drowsiness, or confusion.<br/> 16 And then you have a paradigm shift that shows<br/> 17 struggling and resistance can indicate an immediate<br/> 18 medical emergency. Am I accurate in what I've stated<br/> 19 thus far?<br/> 20 A You are.<br/> 21 Q Tell me what your supervisor, Lieutenant Robbins, or<br/> 22 your transporting officers did to get prompt medical<br/> 23 attention for Mr. Perry, considering he was struggling<br/> 24 and resisting, which could be considered unusual<br/> 25 irritability, he showed drowsiness and confusion upon</p>                                                                           | <p style="text-align: center;">Page 84</p> <p>1 and not a criminal act on the date Mr. Perry died?<br/> 2 A I don't think they were unaware of that possibility.<br/> 3 Q Do or don't? I'm sorry.<br/> 4 A I said I don't think they were unaware of that<br/> 5 possibility.<br/> 6 Q So the opposite of that is you believe they were aware<br/> 7 of that paradigm shift on the night Mr. Perry died,<br/> 8 correct?<br/> 9 A It was a possibility, yes.<br/> 10 Q Now, after Mr. Perry's return to PPS, and we've gone<br/> 11 over a portion of this, we know that there were<br/> 12 officers surrounding him while he was on the floor,<br/> 13 correct?<br/> 14 A That's correct.<br/> 15 Q We know that the tape heard Mr. Perry calling out<br/> 16 certain things, words to the extent, "These officers<br/> 17 are killing me," "God help me," things of that nature,<br/> 18 correct?<br/> 19 MS. LAPPEN: Objection to form and<br/> 20 foundation. It misstates the chief's former<br/> 21 testimony.<br/> 22 Go ahead and answer.<br/> 23 A Yeah. I don't recollect all the things he said, but I<br/> 24 do know that he was calling out.<br/> 25 BY MR. GENDE:</p>                       |

# Video Deposition of Chief Edward Flynn 4/2/2014

22 (Pages 85 to 88)

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| <p style="text-align: center;">Page 85</p> <p>1 Q You also understand that Mr. Perry was complaining of</p> <p>2 a difficulty breathing to the officers in his</p> <p>3 presence, correct?</p> <p>4 MS. LAPPEN: Same objections.</p> <p>5 Go ahead and answer.</p> <p>6 A Yeah. I don't recall.</p> <p>7 BY MR. GENDE:</p> <p>8 Q Was there a unwritten policy or training in the police</p> <p>9 department that an inmate who is complaining of</p> <p>10 difficulty breathing is okay if he can talk?</p> <p>11 MS. LAPPEN: Objection as to the form.</p> <p>12 Foundation.</p> <p>13 A Yeah. There was -- the training is not that anymore.</p> <p>14 But for many years, particularly in the training of</p> <p>15 things like the Heimlich maneuver, it was generally</p> <p>16 asserted to officers that if they were responding to</p> <p>17 somebody in medical distress, the hierarchy of</p> <p>18 concerns always was start the breathing, stop the</p> <p>19 bleeding, treat for shock.</p> <p>20 So the first question was whether or not the</p> <p>21 person was breathing. If they were breathing, that</p> <p>22 would usually indicate if they could talk; treat for</p> <p>23 shock and stop the bleeding first because obviously</p> <p>24 they could breathe. Also, in the Heimlich maneuver,</p> <p>25 the concern was that if you intervene too assertively,</p>                                              | <p style="text-align: center;">Page 87</p> <p>1 Q Did you know whether or not Mr. Perry's death was of</p> <p>2 natural consequences or some police misconduct prior</p> <p>3 to the coroner's report coming out in November of</p> <p>4 2010?</p> <p>5 MS. LAPPEN: Objection as to the form of the</p> <p>6 question.</p> <p>7 Go ahead and answer.</p> <p>8 A I -- We had no indications that there were any police</p> <p>9 officer conducts that directly caused his death. I</p> <p>10 don't recall the sequence of findings.</p> <p>11 BY MR. GENDE:</p> <p>12 Q I'd like to look at the second page of your "Shepherd</p> <p>13 Express" interview. You were asked a question about</p> <p>14 watching Derek Williams' videos, you provide an</p> <p>15 answer, and I'm going to focus on a part of it, and</p> <p>16 you can include whatever additional part you feel is</p> <p>17 necessary. You state, "And in circumstance where the</p> <p>18 cause of death was considered natural causes, there is</p> <p>19 no reason to look at the tape for me." Was that a</p> <p>20 true statement when you made it?</p> <p>21 A At the time when I made it, yeah.</p> <p>22 Q And this was as of October 24th, 2012, if you look at</p> <p>23 the front page of the exhibit?</p> <p>24 A Okay.</p> <p>25 Q Was there any reason for you to look at the tapes of</p> |
| <p style="text-align: center;">Page 86</p> <p>1 you might dislodge whatever it was and block off their</p> <p>2 airway. So if they were able to communicate, that</p> <p>3 usually indicated they weren't in the distress that</p> <p>4 would keep them from, you know, keep them alive.</p> <p>5 Over the years, that training has evolved. It's</p> <p>6 not the new instruction, but it's obviously in the</p> <p>7 minds of a lot of officers given earlier training over</p> <p>8 many years. I mean, that was the training when I was</p> <p>9 an officer. It was the training 10 or 20 years later.</p> <p>10 I don't know -- changed in the last few years, but</p> <p>11 that was not an uncommon thought that the sequence of</p> <p>12 treatments were dependent upon whether or not the</p> <p>13 subject had the capability of breathing.</p> <p>14 (Exhibit 71 identified)</p> <p>15 BY MR. GENDE:</p> <p>16 Q Chief, I'm going to show you what we've marked as</p> <p>17 Exhibit No. 71. These were some interviews conducted</p> <p>18 regarding in-custody deaths. One....</p> <p>19 MS. LAPPEN: Are you done with Exhibit 28?</p> <p>20 MR. GENDE: No. You can leave those</p> <p>21 exhibits in front of the chief. We'll get back</p> <p>22 to them. Thank you.</p> <p>23 Q Do you recall providing interviews to the "Shepherd</p> <p>24 Express" about Derek Williams' in-custody death?</p> <p>25 A I do.</p> | <p style="text-align: center;">Page 88</p> <p>1 Mr. Perry while he was at PPS, considering he had died</p> <p>2 later on in the evening?</p> <p>3 MS. LAPPEN: Objection as to the form of the</p> <p>4 question.</p> <p>5 A As I say, I don't recollect the sequence of events. I</p> <p>6 simply recollect having seen the tape. I don't</p> <p>7 remember if I saw the tape as part of the CIRB or as</p> <p>8 part of the Internal Affairs investigation briefing.</p> <p>9 I don't recall.</p> <p>10 BY MR. GENDE:</p> <p>11 Q You as chief are concerned about people that are made</p> <p>12 prisoners under your custody and control, correct?</p> <p>13 Citizens that become prisoners become the Milwaukee</p> <p>14 Police Department chief's concern, true?</p> <p>15 A True.</p> <p>16 Q And your concern is for the health, safety, and</p> <p>17 welfare of any individual who is taken into custody</p> <p>18 and no longer has the freedom to move about of their</p> <p>19 own accord, correct?</p> <p>20 A That's correct.</p> <p>21 Q And part of your duty and responsibility as the police</p> <p>22 chief is to make sure that your officers, your</p> <p>23 subordinates, express that concern for the individual</p> <p>24 prisoner or inmate's health, safety, and welfare while</p> <p>25 under custody and control, yes?</p>                  |

# Video Deposition of Chief Edward Flynn 4/2/2014

23 (Pages 89 to 92)

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| <p style="text-align: center;">Page 89</p> <p>1 MS. LAPPEN: Object as to the form.<br/>2 Go ahead and answer.<br/>3 A Yes.<br/>4 BY MR. GENDE:<br/>5 Q So when an inmate dies on your watch, as the chief,<br/>6 you want to know why that happened, right?<br/>7 A I'd want a thorough investigation.<br/>8 Q And as part of that thorough investigation, you want<br/>9 the results reported to you, correct?<br/>10 A That's correct.<br/>11 Q And a thorough investigation means considering all<br/>12 sources of information that are available through the<br/>13 course of the investigation, correct?<br/>14 A I expect the investigators to do that, yes.<br/>15 Q All right. You've told me earlier that there's been<br/>16 less than ten in-custody deaths since you've been<br/>17 chief. Does that sound right?<br/>18 A Yep.<br/>19 Q All right. It doesn't sound like a lot to me. Does<br/>20 it sound like a lot to you, less than ten?<br/>21 A Well, if you're basing it on over a quarter million of<br/>22 arrests, it's not a very high number, no.<br/>23 Q And that was the impression I got from you, is you did<br/>24 not believe less than ten in-custody deaths was a<br/>25 significant number since you've been police chief. Is</p>                                     | <p style="text-align: center;">Page 91</p> <p>1 suspect. If there is no indication of that, I don't<br/>2 need to see for myself that the police didn't do<br/>3 anything to the person.<br/>4 Q Are you concerned about inhumane treatment of an<br/>5 individual who subsequently dies in custody?<br/>6 A Well, of course I am, and when that is brought to our<br/>7 attention, we take appropriate action.<br/>8 Q Do you know how long the tapes of Mr. Perry at PPS<br/>9 last? Are they more than five minutes, less than five<br/>10 minutes?<br/>11 A I don't know. There was a lot of different tapes<br/>12 there, so....<br/>13 Q Do you know how long he was at PPS after his release<br/>14 from the emergency room and before he was transported<br/>15 to the Criminal Justice Facility?<br/>16 A I don't recall.<br/>17 Q If you would have reviewed the tapes of Mr. Perry at<br/>18 PPS after his death and before you knew that the<br/>19 coroner or the medical examiner had opined it was from<br/>20 natural causes, and you heard your lieutenant say on<br/>21 the tape words to the effect that "If you are going to<br/>22 act like an animal, we'll treat you like you're in<br/>23 prison," would you have taken action?<br/>24 A Well, we did.<br/>25 Q But I'm asking you personally, if you had looked at</p> |
| <p style="text-align: center;">Page 90</p> <p>1 that fair?<br/>2 A That's correct.<br/>3 Q All right. Is there anything that prevented you as a<br/>4 chief of police to ensure yourself that everything was<br/>5 done correctly as it relates to Mr. Perry on the<br/>6 evening in question and before he died?<br/>7 MS. LAPPEN: Objection as to the form of the<br/>8 question.<br/>9 But go ahead and answer.<br/>10 A If you're trying to assert do I conduct my own<br/>11 investigation, no, I don't. I delegate that to the<br/>12 appropriate personnel. I respond to the results of<br/>13 that investigation. I don't reinvestigate it myself.<br/>14 BY MR. GENDE:<br/>15 Q And I'm not asking if you conduct your own<br/>16 investigation, but you've made a statement here as<br/>17 part of an interview process regarding another in-<br/>18 custody death that you won't review tapes of<br/>19 individuals who die in custody if they die of natural<br/>20 causes.<br/>21 A I don't believe I said "won't." I said in the context<br/>22 of an interview that I don't need to when the ruling<br/>23 is a natural cause death. The challenge for us is to<br/>24 determine whether or not the tape shows that police<br/>25 activity was directly resulting in the demise of the</p> | <p style="text-align: center;">Page 92</p> <p>1 these tapes shortly after the occurrence and heard<br/>2 that comment, would you have taken action?<br/>3 MS. LAPPEN: Objection as to the form of the<br/>4 question.<br/>5 But go ahead and answer.<br/>6 A I took action once I was aware of what he had said.<br/>7 BY MR. GENDE:<br/>8 Q In the event that you had looked at these tapes and<br/>9 heard Mr. Perry complaining of difficulty breathing<br/>10 and you heard one his officers say, "If you're<br/>11 talking, you're breathing," would you have taken<br/>12 action in regards to that?<br/>13 MS. LAPPEN: Objection. That calls for<br/>14 speculation, and form.<br/>15 But go ahead and answer.<br/>16 A I don't take disciplinary action for people that make<br/>17 an incorrect decision that's not motivated by malice<br/>18 or intent. All right? I had a lieutenant who said<br/>19 something that was clearly out of bounds and wrong,<br/>20 and he was disciplined. I have a circumstance where<br/>21 an officer just coming back from the hospital, where<br/>22 he's told that nothing is wrong with the patient, says<br/>23 something to calm the patient down who is complaining<br/>24 that he can't breathe. He was wrong. It turns out,<br/>25 hours later, this individual would suffer a cardiac</p> |



# Video Deposition of Chief Edward Flynn 4/2/2014

24 (Pages 93 to 96)

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| <p style="text-align: center;">Page 93</p> <p>1 event. That's not the same as willful misconduct.<br/> 2 BY MR. GENDE:<br/> 3 Q Was it hours later? Do you know that?<br/> 4 A Well, I know it was sometime later. I don't remember<br/> 5 how much longer.<br/> 6 Q Could it have been within the hour?<br/> 7 A I don't remember exactly the timelines.<br/> 8 Q Could it have been within 30 minutes? I'm asking if<br/> 9 you know, and you can tell me you don't know.<br/> 10 A Yeah, I'm telling you I don't know. It's, you<br/> 11 know....<br/> 12 Q Let's move on to the next page of your interview. And<br/> 13 again, we are looking at the interview with "Shepherd<br/> 14 Express." The last comment you make --<br/> 15 A Mm-hmm.<br/> 16 Q -- "It's clear to me watching that tape," and you're<br/> 17 referring to the Derek Williams tape, "that they<br/> 18 simply don't believe him. If you can talk, you can<br/> 19 breathe. That's a common understanding of all the<br/> 20 officers dealing with a crisis." Do you recall making<br/> 21 that statement?<br/> 22 A Where are we, on the last event?<br/> 23 Q It's the last sentence of your quote.<br/> 24 A Oh. Yeah.<br/> 25 Q Did you make that statement?</p>                                                     | <p style="text-align: center;">Page 95</p> <p>1 because you're communicating with me, calm down,"<br/> 2 isn't correct, but it's a not uncommon thought.<br/> 3 Q And that was the training in effect on the day Mr.<br/> 4 Perry died, correct?<br/> 5 A I don't know that it was the training in effect then,<br/> 6 but it had been the training years ago. When we<br/> 7 evolved, I don't recall exactly, but it -- I'm just<br/> 8 saying that it's -- notwithstanding that fact, it's a<br/> 9 common impression.<br/> 10 Q And in the event that the tapes reveal one of your<br/> 11 officers told Mr. Perry words to the effect, when Mr.<br/> 12 Perry complained "I can't breathe" or "I'm having<br/> 13 trouble breathing," and the officer said, "If you can<br/> 14 talk, you can breathe," in your opinion is that a<br/> 15 proper or an improper response of your officer as it<br/> 16 relates to a potential crisis?<br/> 17 A It's more a question is it a correct or an incorrect<br/> 18 response. I mean, it is very common for officers to<br/> 19 deal with people in crisis who are hyperventilating.<br/> 20 It happens all the time. They're hyperventilating<br/> 21 because they just ran from the police. They're<br/> 22 hyperventilating because they're in a crisis and<br/> 23 concerned and grieving. They're hyperventilating<br/> 24 because they're excited. It's not uncommon for us to<br/> 25 be faced with people who are not in a medical crisis</p> |
| <p style="text-align: center;">Page 94</p> <p>1 A Yes.<br/> 2 Q And you made that statement in October of 2012,<br/> 3 correct?<br/> 4 A Yes, I did.<br/> 5 Q I'm sorry? Okay.<br/> 6 A Yep.<br/> 7 Q And when you say, "If you can talk, you can breathe;<br/> 8 that's a common understanding of all officers dealing<br/> 9 with a crisis," what did you mean by that?<br/> 10 A I meant that that was and has been a common<br/> 11 understanding. I'm not asserting that it's correct.<br/> 12 I'm not asserting that it's medical training. I am<br/> 13 asserting that it is a common understanding. It turns<br/> 14 out not to be correct, but it has been an<br/> 15 understanding that has -- used to be part of training<br/> 16 years ago, isn't, but it's an understanding. If<br/> 17 somebody is capable of speaking, they are presumably<br/> 18 breathing.<br/> 19 Now, that is kind of a take-off on a different<br/> 20 kind of training. People with heart attacks are<br/> 21 having difficulty breathing, but they can talk.<br/> 22 Obviously it doesn't apply to that. What I'm trying<br/> 23 to communicate is that it's in an officer's mind<br/> 24 sometimes this notion of "If you can breathe, you can<br/> 25 talk," meaning, "You're not in a crisis right now</p> | <p style="text-align: center;">Page 96</p> <p>1 who are complaining of shortness of breath or<br/> 2 inability to breathe. Overwhelmingly, once they<br/> 3 settle down, they're fine.<br/> 4 There are circumstances, however, in which<br/> 5 somebody is giving evidence of having a more<br/> 6 significant crisis. I expect us to be able to adjust<br/> 7 more quickly to that reality. Sometimes they're going<br/> 8 to be wrong. The vast majority of the time, they are<br/> 9 right.<br/> 10 In this case, in the Perry case, as I say, I<br/> 11 don't know what they would have said if he had said<br/> 12 that absent having just been charged -- discharged<br/> 13 from the hospital. They might have treated it<br/> 14 differently. I don't know. What I do know is they<br/> 15 weren't trying to be inhumane to him. It sounds to me<br/> 16 like they were trying to calm him down.<br/> 17 Q Tell me, as the chief, what prevented, if you know,<br/> 18 any of your officers or your supervisor on the evening<br/> 19 in question when Mr. Perry was returned from the<br/> 20 emergency room to the PPS, what prevented any<br/> 21 Milwaukee Police Department employee from requesting<br/> 22 additional medical attention for Mr. Perry?<br/> 23 A Nothing.<br/> 24 Q On the fourth page of the exhibit we marked as Exhibit<br/> 25 69, you make a comment about your officers: "They</p>                                                                           |

# Video Deposition of Chief Edward Flynn 4/2/2014

25 (Pages 97 to 100)

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| <p style="text-align: center;">Page 97</p> <p>1 followed our procedures and protocols."<br/> 2 MS. LAPPEN: Just wait until the chief<br/> 3 catches up with you.<br/> 4 MR. GENDE: Sure.<br/> 5 A Where are we going?<br/> 6 Q Well, let's start on page 3 again so it's in context.<br/> 7 We previously read into the record that "The officers<br/> 8 at the hospital said they thought something more was<br/> 9 wrong with him, and after continued conference, the<br/> 10 medical personnel themselves said to the officers,<br/> 11 their words, not ours, 'We think he's faking.' Based<br/> 12 on that, the officers took him back to the prison<br/> 13 facility." Is that a accurate statement thus far --<br/> 14 A Yep.<br/> 15 Q -- of your words?<br/> 16 A Yep.<br/> 17 Q You go on to say, "They followed our procedures and<br/> 18 protocols." What procedures and protocols did they<br/> 19 follow in bringing Mr. Perry back to the facility<br/> 20 after they remained concerned that he was having a<br/> 21 medical condition and after they were informed by<br/> 22 Mount Sinai that allegedly he was faking?<br/> 23 A As I indicated at the very beginning of this<br/> 24 deposition, our evaluation of this circumstance<br/> 25 uncovered an issue not anticipated in our procedures,</p>                                                                                                                                               | <p style="text-align: center;">Page 99</p> <p>1 been incorrect, but I wouldn't necessarily say they<br/> 2 were ignoring what the discharge papers said, because<br/> 3 he did not present another seizure to them while he<br/> 4 was back in our custody.<br/> 5 Q I have two follow-up based on that. First of all, you<br/> 6 don't assert that Mr. Perry was able to advocate for<br/> 7 himself as it relates to the first part of the<br/> 8 emergency room instructions.<br/> 9 A No, no, no. No, I'm not trying to say that.<br/> 10 Q And secondly, my inquiry is not asking you to admit<br/> 11 that your officers ignored discharge instructions. My<br/> 12 question to you is whether or not it is policy and<br/> 13 procedure for officers transporting Mr. Perry to<br/> 14 ignore discharge instructions from emergency room<br/> 15 personnel?<br/> 16 A No.<br/> 17 Q So when you say as part of your statement to the<br/> 18 press, reflected in Exhibit No. 69, that your officers<br/> 19 followed all their policies and procedures, that would<br/> 20 not include ignoring discharge instructions, correct?<br/> 21 A That's correct. That would not include willfully<br/> 22 ignoring discharge instructions.<br/> 23 Q Well, are they trained to negligently ignore discharge<br/> 24 instructions?<br/> 25 A They're just not trained to ignore them.</p> |
| <p style="text-align: center;">Page 98</p> <p>1 which was what happens when, against the wishes or<br/> 2 concerns of officers, the emergency room refuses to<br/> 3 admit a prisoner. So we did not have a policy or a<br/> 4 protocol that said this is what you do when the<br/> 5 doctors tell you you're wrong and there's nothing<br/> 6 wrong with your prisoner. So based on that, they took<br/> 7 him back and they processed him according to our<br/> 8 standard procedures for processing a prisoner, and<br/> 9 that's what they complied with.<br/> 10 Q Do standard procedures for processing a prisoner<br/> 11 released from an emergency room include ignoring<br/> 12 discharge instructions?<br/> 13 A I think ignore -- I don't -- I'm not going to<br/> 14 categorize it as ignoring them. I think a judgment<br/> 15 clearly was made based on the information in front of<br/> 16 them, and they made a decision. The discharge<br/> 17 instructions, as you can tell, are all written in the<br/> 18 first person for somebody who's conscious and<br/> 19 advocating for himself.<br/> 20 In this situation, as I say, context is<br/> 21 everything. Every single one of those emergency<br/> 22 precautions directly pertains to another seizure,<br/> 23 which did not occur, except for one, and that one that<br/> 24 doesn't apply to a seizure is not inconsistent with<br/> 25 somebody having a strong sedative. So they may have</p> | <p style="text-align: center;">Page 100</p> <p>1 Q That's not the policy and procedure, whether it's<br/> 2 willful or negligent, true?<br/> 3 A That's correct.<br/> 4 Q You go on to say at page 4, quote, and now I'm at the<br/> 5 second paragraph, Chief, "We generally never talk<br/> 6 about cases that are under litigation. All right?<br/> 7 But it's so clear to us in this case that the officers<br/> 8 followed their procedures and tried their best to get<br/> 9 him medical assistance, but I thought it was worth<br/> 10 taking the risk to be a transparent agency in this<br/> 11 chain of events." Do you recall making that<br/> 12 statement?<br/> 13 A Yes, I do.<br/> 14 Q Was it so clear to you when you made this statement<br/> 15 that your officers were following policies and<br/> 16 procedures when your lieutenant said words to the<br/> 17 effect that "If you're going to act like an animal,<br/> 18 we'll treat you like you're in prison"?<br/> 19 MS. LAPPEN: Objection as to the form, and<br/> 20 this has already been discussed in the<br/> 21 deposition, so it's been asked and answered.<br/> 22 But go ahead and answer.<br/> 23 A I don't consider his statement relevant to what our<br/> 24 officers did on behalf of this prisoner. To me that<br/> 25 was the important consideration, that our officers had</p>              |

# Video Deposition of Chief Edward Flynn 4/2/2014

26 (Pages 101 to 104)

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| <p style="text-align: center;">Page 101</p> <p>1 properly sought medical attention for him, properly<br/> 2 advocated for him, and when they were rejected,<br/> 3 returned him to the prison jail environment to be<br/> 4 processed that way. That was irrelevant to the<br/> 5 inappropriate comment of the lieutenant, who<br/> 6 subsequently retired under the threat of -- or, while<br/> 7 under investigation.<br/> 8 BY MR. GENDE:<br/> 9 Q Was it so clear to you that your officers followed<br/> 10 policies and procedures as it relates to ignoring Mr.<br/> 11 Perry's complaints that he was having difficulty<br/> 12 breathing?<br/> 13 MS. LAPPEN: Objection. Form and<br/> 14 foundation. Asked and answered.<br/> 15 Go ahead and answer.<br/> 16 A I think it's clear they did not ignore it. They<br/> 17 thought -- they sought to calm him. They clearly did<br/> 18 not recognize that there was medical distress.<br/> 19 BY MR. GENDE:<br/> 20 Q Were they -- was it so clear to you when you made this<br/> 21 statement that your officers were following policies<br/> 22 and procedures when they ignored Mr. Perry's calls for<br/> 23 help as they surrounded him on the floor of the<br/> 24 Prisoner Processing Section?<br/> 25 A Well, they --</p> | <p style="text-align: center;">Page 103</p> <p>1 fecal matter on the floor as documented by your<br/> 2 custodial staff, is there a reason why that<br/> 3 information would not have been forwarded to the<br/> 4 Criminal Justice Facility where Mr. Perry was taken?<br/> 5 MS. LAPPEN: Objection to the form. It<br/> 6 calls for speculation.<br/> 7 Go ahead and answer.<br/> 8 A I don't know.<br/> 9 BY MR. GENDE:<br/> 10 Q Is it policy and procedure not to report that an<br/> 11 inmate had been laying in his own blood, spit, and<br/> 12 fecal matter when he's transported over to CJF?<br/> 13 A No, it's not.<br/> 14 Q Was it so clear to you, pursuant to policies and<br/> 15 procedures being followed, that when Mr. Perry was<br/> 16 dropped on his head, that was an expectation of how to<br/> 17 transport individuals under your custody and control?<br/> 18 A No.<br/> 19 Q You go on to state as part of this interview, quote --<br/> 20 and now I'm at the third full paragraph, page 3, "We<br/> 21 are the ones that are willing to talk about it,<br/> 22 because our piece of it indicates to us that our<br/> 23 officers tried to get this man appropriate treatment."<br/> 24 Was that a true statement when you made it?<br/> 25 A Yes.</p>                                                                                                                                                                                            |
| <p style="text-align: center;">Page 102</p> <p>1 MS. LAPPEN: Same objections.<br/> 2 THE WITNESS: Yeah.<br/> 3 MS. LAPPEN: Go ahead and answer.<br/> 4 A They had sought help for him in the past. At this<br/> 5 point in time, their concern was that he not injure<br/> 6 himself or anybody else.<br/> 7 BY MR. GENDE:<br/> 8 Q Were your -- was it so clear to you that your officers<br/> 9 were following policies and procedures when they<br/> 10 failed to inform anybody at the Criminal Justice<br/> 11 Facility that the cell in which Mr. Perry had just<br/> 12 been removed had gobs of sput -- bud -- I'm sorry --<br/> 13 gobs of blood, spit, and fecal matter on the floor<br/> 14 where he lay?<br/> 15 MS. LAPPEN: Objection as to the form and<br/> 16 the foundation.<br/> 17 But go ahead and answer.<br/> 18 A Well, as has been indicated previously during this<br/> 19 deposition, from the reports we have nobody observed<br/> 20 that until after he was moved from the cell. And it's<br/> 21 clear from the nurse's admission document that she was<br/> 22 aware immediately upon his presentation that he was<br/> 23 bleeding.<br/> 24 BY MR. GENDE:<br/> 25 Q In the event that there were gobs of blood, spit, and</p>                             | <p style="text-align: center;">Page 104</p> <p>1 Q What appropriate treatment did your officers attempt<br/> 2 to get for Mr. Perry after he returned to PPS and<br/> 3 prior to his death at the Criminal Justice Facility?<br/> 4 A They had already gotten him appropriate medical<br/> 5 treatment where they were told there was nothing wrong<br/> 6 with him. So subsequently, no, they did not get him<br/> 7 additional treatment.<br/> 8 Q So after he was returned to PPS, you're not aware of<br/> 9 any of your officers' efforts to get Mr. Perry<br/> 10 appropriate medical treatment, true?<br/> 11 A They did not seek additional treatment, no.<br/> 12 Q You go on to state, on page 4 and the top of page 5,<br/> 13 "Our officers were told by the doctor that he'd given<br/> 14 him medication to make him sleep, so the notion that<br/> 15 he would, like, lose the ability gradually to walk,<br/> 16 that he would be gradually -- that he would gradually<br/> 17 grow less coherent and make less sense was consistent<br/> 18 to them with what they had been told by the medical<br/> 19 authorities, which is, 'We've given him a medication,<br/> 20 a sedative to make him sleep,' so they stood by with<br/> 21 him while his took effect." Was that a true statement<br/> 22 when you made it?<br/> 23 A Yes.<br/> 24 Q In the event that your officers understood and they<br/> 25 conveyed to you that Mr. Perry was going to lose the</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

27 (Pages 105 to 108)

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| <p style="text-align: center;">Page 105</p> <p>1 ability to walk, would grow less coherent, and make<br/> 2 less sense, being consistent with his medications,<br/> 3 tell me how that's consistent with him faking his<br/> 4 medical condition.<br/> 5 A You'd have to ask the people that made those<br/> 6 representations.<br/> 7 Q Where do you state, in this sentence that I've just<br/> 8 read into the record, that in addition to losing the<br/> 9 ability to gradually walk, to gradually grow less<br/> 10 coherent, and make less sense as a result of the<br/> 11 medications, also included the involuntary urination<br/> 12 and defecation and bleeding that we know Mr. Perry<br/> 13 subsequently suffered after returning to PPS?<br/> 14 MS. LAPPEN: Objection as to the form of the<br/> 15 question.<br/> 16 But go ahead and answer.<br/> 17 A Yeah, I don't know.<br/> 18 BY MR. GENDE:<br/> 19 Q Did you take that into consideration, the urination<br/> 20 and defecation and bleeding that we've discussed, when<br/> 21 you made this statement?<br/> 22 A No, I did not.<br/> 23 Q You go on to state on this page, "At this case, we're<br/> 24 presented with an individual who, as you say, is<br/> 25 gradually becoming more incoherent, but that to them</p>                                                                                    | <p style="text-align: center;">Page 107</p> <p>1 medical attention?<br/> 2 MS. LAPPEN: Objection. The question has<br/> 3 been asked and answered. Foundation.<br/> 4 But go ahead and answer.<br/> 5 A He had just been evaluated medically. No additional<br/> 6 effort was made to get him additional medical<br/> 7 attention.<br/> 8 BY MR. GENDE:<br/> 9 Q When Mr. Perry calls out words to the effect that "I<br/> 10 need help," do you believe that's him self-reporting a<br/> 11 potential medical emergency?<br/> 12 A That's what it sounds like.<br/> 13 Q And tell me what your officers did to assist him in<br/> 14 that regard when he said, "I can't breathe"; he called<br/> 15 out for help; he said, "The officers are killing me"?<br/> 16 MS. LAPPEN: Objection. Foundation and form<br/> 17 and it's been asked and answered at least twice<br/> 18 in this deposition already.<br/> 19 But go ahead and answer.<br/> 20 A They continued processing him routinely.<br/> 21 BY MR. GENDE:<br/> 22 Q If we move on to the next page, Chief, on the third<br/> 23 full paragraph down, your statement is, "As I said,<br/> 24 they had sought medical attention for him already.<br/> 25 The next step in the transportation was to take him to</p>                                                                                                                    |
| <p style="text-align: center;">Page 106</p> <p>1 was consistent with what they've been told, that he'd<br/> 2 been given a strong sedative." Did you make that<br/> 3 statement?<br/> 4 A Yes, I did, apparently, yep.<br/> 5 Q Tell me who was standing by Mr. Perry after he was<br/> 6 placed in the cell for observation to determine<br/> 7 whether or not the emergency room discharge<br/> 8 instructions were being followed, if you know.<br/> 9 A I don't know.<br/> 10 Q Tell me who was standing by Mr. Perry while he was<br/> 11 placed in the holding cell A3 and gradually losing the<br/> 12 ability to walk, gradually growing more incoherent and<br/> 13 making less sense, bleeding from somewhere, and having<br/> 14 urinated and defecated on himself? Who was standing<br/> 15 by then, sir?<br/> 16 A I don't know.<br/> 17 Q You further state in your interview, quote -- and<br/> 18 we're on the second paragraph of this page, "We took<br/> 19 him to the hospital in good faith, based on his self-<br/> 20 reported medical condition and his seizure. The<br/> 21 hospital released him back to us saying he was okay to<br/> 22 go back to jail." Is that a true statement?<br/> 23 A To my understanding, yes.<br/> 24 Q When Mr. Perry self-reported at PPS that he was having<br/> 25 difficulty breathing, what action was taken to get him</p> | <p style="text-align: center;">Page 108</p> <p>1 a facility where there are medical personnel on duty<br/> 2 24 hours a day. We don't have nurses in our jail<br/> 3 facility. The county sheriff's office does, and so<br/> 4 the next step in the process was to take him there."<br/> 5 Is that a true statement?<br/> 6 A It's true.<br/> 7 Q Do you know why Mr. Perry was delayed in being taken<br/> 8 to the Criminal Justice Facility?<br/> 9 A The paperwork had to be processed.<br/> 10 Q Why was the next step in the transportation process to<br/> 11 take him to CJF because they had nurses there?<br/> 12 A The next step in the process from our jail is to CJF,<br/> 13 but CJF has nurses. So, as I say, we subsequently<br/> 14 adjusted that policy if we have a future disagreement<br/> 15 with emergency room staff, but at the time of this the<br/> 16 policy didn't exist, so they took him back to jail<br/> 17 where they finished the paperwork. And the next step<br/> 18 after jail is CJF. CJF has medical personnel.<br/> 19 Q I'm trying to understand the context of your statement<br/> 20 where you say, quote --<br/> 21 A Well, I don't know. The question isn't here, so I<br/> 22 don't know what the context was.<br/> 23 Q Well, we know what your response is.<br/> 24 A Yes.<br/> 25 Q Which I read into the record, and you said it was a</p> |



# Video Deposition of Chief Edward Flynn 4/2/2014

28 (Pages 109 to 112)

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| <p style="text-align: center;">Page 109</p> <p>1 true statement. Why was it important to get Mr. Perry<br/>2 to CJF where they had medical -- I'm sorry -- medical<br/>3 personnel on duty 24 hours a day?<br/>4 MS. LAPPEN: Objection. Asked and answered.<br/>5 But go ahead and answer.<br/>6 A Because once he is processed out of our system, that<br/>7 is a place that he has subsequent medical problems is<br/>8 in a better position to evaluate and do something<br/>9 about it.<br/>10 BY MR. GENDE:<br/>11 Q Who said he was having medical problems that required<br/>12 a nurse's attention at CJF? Where is that in any of<br/>13 the reports that we've reviewed, Chief?<br/>14 A What we have is a condition in which a guy is under<br/>15 the influence of a sedative, has had prior seizures,<br/>16 has self-admitted that he has epilepsy, has been<br/>17 discharged from a hospital over the objection of our<br/>18 officers, and continues to obviously respond to the<br/>19 results of his sedative. Clearly he has medical<br/>20 issues. We know that. Right? The hospital just<br/>21 discharged him in the context of his seizures.<br/>22 So we wanted to get him to CJF as expeditiously<br/>23 as possible should he have another seizure. The<br/>24 context of us taking him back from the emergency room<br/>25 was he didn't have subsequent seizures in our</p>                                                                     | <p style="text-align: center;">Page 111</p> <p>1 affirmative or negative response.<br/>2 MS. LAPPEN: Objection. It's been asked and<br/>3 answered. Form.<br/>4 But go ahead and answer.<br/>5 A As far as I understand your question, yes.<br/>6 BY MR. GENDE:<br/>7 Q Thank you. Chief, if we can go on to page 7, as a<br/>8 further part of your statement, and I'm looking at the<br/>9 first full paragraph where you describe Mr. Perry's<br/>10 death as being a bad outcome. Do you see where I'm<br/>11 at?<br/>12 A I think at the, yeah, first full paragraph?<br/>13 Q Yes, sir.<br/>14 A Yeah.<br/>15 Q You go on to state, "All I'm in a position to<br/>16 professionally evaluate is did the officers respond in<br/>17 a way consistent with their training and policy." Do<br/>18 you see where I read that?<br/>19 A Yes.<br/>20 Q You agree that was part of your duties and<br/>21 responsibilities was to make a professional evaluation<br/>22 regarding your officers' conduct on the night in<br/>23 question, right?<br/>24 A That's correct.<br/>25 Q Now, we've gone over several issues with the officers'</p>                                                                                                                                           |
| <p style="text-align: center;">Page 110</p> <p>1 presence. He presented as you have previously<br/>2 described.<br/>3 Q So in answer to my question, are you telling me that<br/>4 it was important to get Mr. Perry to CJF because they<br/>5 had nurses on duty 24 hours a day because he continued<br/>6 to suffer from a medical condition?<br/>7 A Well, he had a medical condition when he was admitted<br/>8 to us. That was part of the initial intake. We knew<br/>9 he had a medical condition. He had seizures. He<br/>10 didn't have seizures the second time he was in our<br/>11 care, but he was somebody who had self-reported and<br/>12 had already previously in our custody before we took<br/>13 him to the emergency room had a seizure. So we know<br/>14 we have a prisoner who has seizures. Get him to CJF<br/>15 as soon as we can because they should know. They've<br/>16 got medical personnel, we've got somebody who has<br/>17 seizures and will presumably need a re-application of<br/>18 seizure medicine.<br/>19 Q It sounds to me like you're answering my question,<br/>20 "Yes," and then providing an explanation. Is your<br/>21 answer yes or no, considering your explanation that<br/>22 Mr. Perry had to be taken to CJF because they had<br/>23 nurses on staff 24 hours a day that could evaluate his<br/>24 ongoing medical condition? I already understand your<br/>25 explanation. Now I just need to know if it's an</p> | <p style="text-align: center;">Page 112</p> <p>1 conduct on the night in question, true?<br/>2 A Yes.<br/>3 Q You would agree not all of your officers, based on<br/>4 what we know today, responded in a way that was<br/>5 consistent with their training and policies, true?<br/>6 MS. LAPPEN: Objection as to the form of the<br/>7 question, and it's vague.<br/>8 Go ahead and answer.<br/>9 A As I say, I don't know what the question was that was<br/>10 posed when I said that. It's clear to me in this<br/>11 statement I am referring to the officers that had<br/>12 escorted him to the hospital and escorted him back.<br/>13 They were the ones that I felt particularly, in my<br/>14 mind as I was talking here, had tried to do the right<br/>15 thing for him.<br/>16 BY MR. GENDE:<br/>17 Q I don't want to --<br/>18 A I'm not, you know, I'm not trying sum up the conduct<br/>19 of Lieutenant Robbins in this statement. I'm<br/>20 referring to the officers who had him in their direct<br/>21 custody.<br/>22 Q Let's disregard this statement for a moment, and based<br/>23 on the information and evidence that we've gone<br/>24 through here today, is it your position that all the<br/>25 officers who had contact with Mr. Perry on the night</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

29 (Pages 113 to 116)

| Page 113                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 115                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p>1 in question and before his death responded consistent</p> <p>2 with MPD's policies, trainings -- training, and</p> <p>3 procedures?</p> <p>4 A All right. I'm going to have to engage in some</p> <p>5 semantics here. All right? I have a lieutenant</p> <p>6 there, I have police officers there. Do you want me</p> <p>7 to lump the lieutenant together with the officers so I</p> <p>8 say, no, they didn't, or do you want me to</p> <p>9 disaggregate the fact that the lieutenant clearly was</p> <p>10 wrong and the officers, I thought, were still</p> <p>11 complying with our policies?</p> <p>12 Q Chief, whatever you feel comfortable with is how you</p> <p>13 should answer the question, and if I have additional</p> <p>14 follow-up, I'll ask it.</p> <p>15 A Okay. Well, my feeling is that the officers that were</p> <p>16 involved behaved in a manner consistent with our</p> <p>17 policy.</p> <p>18 Q Which is going to require me to ask some additional</p> <p>19 questions that we've already gone over.</p> <p>20 A All right.</p> <p>21 Q Was it consistent with your policies and procedures to</p> <p>22 ignore discharge instructions? I'm not saying that it</p> <p>23 happened on the night in question. I'm asking you</p> <p>24 generally.</p> <p>25 A Okay. If we're talking generally, should we ignore</p>                                         | <p>1 MS. LAPPEN: Objection as to form. It's</p> <p>2 been asked and answered.</p> <p>3 But go ahead.</p> <p>4 A This is a hypothetical?</p> <p>5 BY MR. GENDE:</p> <p>6 Q It is, sir.</p> <p>7 A Okay. No, it wouldn't be.</p> <p>8 Q Chief, I want to continue on page 7. You state, "Did</p> <p>9 they spend several hours waiting for that medical</p> <p>10 assistance? They did. When the doctors ruled that he</p> <p>11 was fit to come back to the jail but could be expected</p> <p>12 to present himself in a groggy, less coherent way as</p> <p>13 the medication took effect, they took the doctor's</p> <p>14 word and brought him back." Was that a true statement</p> <p>15 when you made it?</p> <p>16 A That's correct, yep.</p> <p>17 Q When you made that statement, tell me where you took</p> <p>18 into account a doctor advising your transporting</p> <p>19 personnel that if Mr. Perry had blood coming from an</p> <p>20 unknown origin or urinated and defecated on himself,</p> <p>21 that was something that would be an effect of the</p> <p>22 medication.</p> <p>23 A I don't have any information to that effect.</p> <p>24 Q Chief, when you had an opportunity to review Exhibit</p> <p>25 No. 69, which we're referring to, did you find any</p>                                                                                                                  |
| Page 114                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Page 116                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1 discharge instructions? No.</p> <p>2 Q Generally speaking, is it consistent with your</p> <p>3 policies and procedures to respond to an inmate who</p> <p>4 complains of difficulty breathing, "If you're talking,</p> <p>5 you're breathing"?</p> <p>6 A It's not consistent.</p> <p>7 Q Is it consistent with policies and procedures to</p> <p>8 ignore potential changes in condition, which may</p> <p>9 suggest a medical emergency is occurring?</p> <p>10 A And as I have said previously, even in the context of</p> <p>11 our policies and procedures, we expect people to</p> <p>12 exercise judgment based on what is known to them. I</p> <p>13 believe in this circumstance, they did. That's</p> <p>14 consistent with policy.</p> <p>15 A policy has -- I mean, no policy is a step-by-</p> <p>16 step rigid prescription for precisely what to do. All</p> <p>17 right? They are general orders. They offer strong</p> <p>18 guidance as to what is required, but judgment clearly</p> <p>19 is a part of the application of policy to a</p> <p>20 circumstance.</p> <p>21 Q Was it policy and procedure -- strike that. Is it</p> <p>22 consistent with policies and procedures to ignore the</p> <p>23 paradigm shift that struggling and resistance can</p> <p>24 indicate an immediate medical emergency and not a</p> <p>25 criminal act? Would that be consistent?</p> | <p>1 statements in there to be inconsistent or ones that</p> <p>2 you would change at this point in time?</p> <p>3 A You know, I said what I said. I'm, you know....</p> <p>4 Q Okay. It is 12:30. I think I'm nearing the end of my</p> <p>5 examination. It may take another 45 minutes. It may</p> <p>6 take an hour. It's up to the witness whether he'd</p> <p>7 like to press on, which I'm happy to do, or we can</p> <p>8 take a short break for lunch.</p> <p>9 A I've got a day ahead of me. Let's go. Let's move</p> <p>10 ahead.</p> <p>11 Q Yes, sir. What is your -- strike that. What was the</p> <p>12 department's policy at the time Mr. Perry passed away</p> <p>13 in providing medical care or lifesaving procedures to</p> <p>14 individuals in your custody?</p> <p>15 A I think you probably have a copy of it. I don't</p> <p>16 recall what it says exactly.</p> <p>17 Q Generally, what is your understanding in that regard?</p> <p>18 A We should get medical care for people who need it.</p> <p>19 Q Are you aware of any written policy that was in effect</p> <p>20 at the time Mr. Perry passed away as to how police</p> <p>21 personnel are to recognize or evaluate an individual</p> <p>22 in their custody or care suffering from a medical</p> <p>23 emergency?</p> <p>24 A I don't know.</p> <p>25 Q Are you aware of any written policy as it relates to</p> |

# Video Deposition of Chief Edward Flynn 4/2/2014

30 (Pages 117 to 120)

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| <p style="text-align: center;">Page 117</p> <p>1 your police officers performing wellness checks on<br/>2 individuals kept in a cell for observation?<br/>3 A I do know there are policies governing it.<br/>4 Q And are you aware whether those policies governing how<br/>5 wellness checks are to be conducted include different<br/>6 observation levels?<br/>7 A I would assume that they do.<br/>8 Q And why would you assume that, Chief?<br/>9 A Well, there are times when we're going to have people<br/>10 in our custody that are exhibiting behaviors that<br/>11 might indicate a risk to themselves or a suicide risk<br/>12 or some such thing, and folks under that context are<br/>13 required to be observed more frequently.<br/>14 Q How about folks that have suffered from seizures and<br/>15 required emergency room contact?<br/>16 A Well, you know, I think medical conditions are one of<br/>17 the variables.<br/>18 Q Are you aware -- strike that. Do you have any<br/>19 information as we sit here today that Mr. Perry did<br/>20 not suffer from a seizure as he lay in cell A3 in his<br/>21 blood, spit, and feces?<br/>22 A Is that the question?<br/>23 Q Do you have any information?<br/>24 A I have no....<br/>25 MS. LAPPEN: I'll object to the form of the</p> | <p style="text-align: center;">Page 119</p> <p>1 follow at the time Mr. Perry died?<br/>2 MS. LAPPEN: Objection as to the form of the<br/>3 question. It's argumentative.<br/>4 Go ahead and answer.<br/>5 A Yeah. No, it wasn't. As indicated earlier, it was<br/>6 more of a holdover from earlier years of training but<br/>7 not a current state of training or an expectation.<br/>8 BY MR. GENDE:<br/>9 Q In the event that your officers determine that there<br/>10 is a medical emergency that requires additional<br/>11 assistance, what are they trained to do for that<br/>12 individual before an ambulance or the fire department<br/>13 or a nurse or a doctor presents themselves?<br/>14 A It depends on the circumstances. If it's a<br/>15 circumstance in which conventional first aid can be<br/>16 applied, they're expected to start the breathing, stop<br/>17 the bleeding, and treat for shock, and wait for<br/>18 medical assistance. If it's somebody who has got a<br/>19 medical condition, they're just expected to see to it<br/>20 that the person is reasonably comfortable and await<br/>21 medical transport.<br/>22 Q And when you say "make sure they're reasonably<br/>23 comfortable," what does that mean, Chief?<br/>24 A The general rule, it means they're placed in a<br/>25 circumstance in which they're not going to injure</p> |
| <p style="text-align: center;">Page 118</p> <p>1 question.<br/>2 THE WITNESS: Right. Right.<br/>3 MS. LAPPEN: But go ahead and answer.<br/>4 A I don't have any information that was brought to my<br/>5 attention that indicated that he did. I don't know<br/>6 how to get information that proves that he didn't.<br/>7 BY MR. GENDE:<br/>8 Q Well, one way to get that information would be to<br/>9 determine his observation level and whether that was<br/>10 followed, true?<br/>11 A That's true.<br/>12 Q Did you see in any report or were you provided any<br/>13 information from any of your detectives or deputies<br/>14 that Mr. Perry was under a specific observation level<br/>15 and that was followed in accord with policies and<br/>16 procedures?<br/>17 A I don't recall.<br/>18 Q And I just want to be clear because I know there's no<br/>19 written policy. Was it the department's policy at the<br/>20 time Mr. Perry passed away, whether written or<br/>21 unwritten, that when an individual complains of not<br/>22 being able to breathe, that the officers' response<br/>23 should be "If you're talking, you're breathing"?<br/>24 A No, it wasn't a department policy.<br/>25 Q Was that a policy that you expected your officers to</p>                            | <p style="text-align: center;">Page 120</p> <p>1 themselves or others.<br/>2 Q Do you know if, when Mr. Perry, after he was dropped<br/>3 on his head and placed in the cell in A3 to be<br/>4 observed, was made more comfortable?<br/>5 A Well, I do know he was placed in a circumstance where<br/>6 he couldn't injure himself or others, and that was a<br/>7 concern at the time.<br/>8 Q My question is, do you know if he was made more<br/>9 comfortable?<br/>10 A Well, I just....<br/>11 Q Do you know?<br/>12 A That's the condition. I mean, no, he was not<br/>13 necessarily made more comfortable, but he -- part of<br/>14 being -- their concern for him was that he might<br/>15 inadvertently do harm to himself.<br/>16 Q Do you know if officers were trained before or at the<br/>17 time of Mr. Perry's death that once an individual who<br/>18 had been released from a hospital for a medical<br/>19 emergency cannot suffer another medical emergency<br/>20 going forward?<br/>21 A I'm sorry. Repeat the question?<br/>22 Q Let me try and be more clear. Do you know if your<br/>23 officers are trained, either prior to Mr. Perry's<br/>24 death or at the time of Mr. Perry's death, that in the<br/>25 event a prisoner is discharged from an emergency room</p>                                                                               |

# Video Deposition of Chief Edward Flynn 4/2/2014

31 (Pages 121 to 124)

| Page 121                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 123                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <p>1 for a medical condition, that that prisoner cannot</p> <p>2 suffer a medical condition or emergency from that</p> <p>3 point forward?</p> <p>4 A No, they're not trained that way.</p> <p>5 Q Do you know if the officers are trained to pay any</p> <p>6 closer attention to an individual who is released from</p> <p>7 an emergency room and remains in their custody and</p> <p>8 control going forward?</p> <p>9 A The policy in the Prisoner Processing Section does, I</p> <p>10 believe, make allowances for people to be under more</p> <p>11 observation, depending on their physical or mental</p> <p>12 condition.</p> <p>13 Q And that was a change made after Mr. Perry's death,</p> <p>14 correct?</p> <p>15 A I'm not sure what the sequence was.</p> <p>16 Q You would agree that your officers should always be on</p> <p>17 the lookout for an individual who may be suffering</p> <p>18 from a medical emergency, correct?</p> <p>19 MS. LAPPEN: Objection as to the form of the</p> <p>20 question.</p> <p>21 But go ahead and answer.</p> <p>22 A Certainly.</p> <p>23 BY MR. GENDE:</p> <p>24 Q Is the review conducted after a in-custody death of an</p> <p>25 inmate different depending on whether the death is</p>                                                                                               | <p>1 Affairs Division as a potential criminal matter?</p> <p>2 A It can be. You know, we sometimes do a single</p> <p>3 investigation, and we sometimes do a dual</p> <p>4 investigation in which there's one investigation of</p> <p>5 disciplinary violations and a parallel investigation</p> <p>6 on a criminal side. It depends on the circumstances.</p> <p>7 Q And do you know if there was any inquiry into a</p> <p>8 potential criminal investigation as it relates to Mr.</p> <p>9 Perry's in-custody death?</p> <p>10 A I don't recall.</p> <p>11 Q Do you personally review the entire investigation of</p> <p>12 in-custody deaths after they're completed?</p> <p>13 A No.</p> <p>14 Q Any reason why not?</p> <p>15 A As I say, I delegate the responsibility for conducting</p> <p>16 the investigation to the appropriate authority. I</p> <p>17 review the conclusions.</p> <p>18 Q Is there a specific individual at the police</p> <p>19 department -- strike that. Is it a police officer's</p> <p>20 responsibility or a supervisor's responsibility to</p> <p>21 make a decision whether an inmate is to receive</p> <p>22 medical attention?</p> <p>23 A I think it depends on the circumstances. I mean, I</p> <p>24 don't know who made the decision initially to get him</p> <p>25 medical treatment, so I would suspect that either can,</p> |
| Page 122                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 124                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>1 determined to be natural or the result of either</p> <p>2 willful or negligent conduct?</p> <p>3 A The review takes place subsequent to the death and</p> <p>4 generally is taking place even prior to a ruling from</p> <p>5 the ME's office as we try to examine and understand</p> <p>6 the circumstances that preceded the death. And that's</p> <p>7 fairly standard, and the results of the Medical</p> <p>8 Examiner's Office are additional important</p> <p>9 information, ultimately, but the investigation doesn't</p> <p>10 wait for that to be done.</p> <p>11 Q Are you aware of any officers under your command and</p> <p>12 control that have ever received additional training as</p> <p>13 it relates to an in-custody death?</p> <p>14 A Do you mean officers that were involved in an incident</p> <p>15 in which there was an in-custody death were retrained?</p> <p>16 Q Let's start with that --</p> <p>17 A Yeah.</p> <p>18 Q -- proposition.</p> <p>19 A I don't know. Offhand, I don't know.</p> <p>20 Q After Mr. Perry's death, the entire police department</p> <p>21 was retrained on how to respond to medical</p> <p>22 emergencies, correct?</p> <p>23 A Well, we made some adjustments, as I have indicated</p> <p>24 earlier, yes.</p> <p>25 Q Is an in-custody death investigated by your Internal</p> | <p>1 but....</p> <p>2 Q Was there some delineation per policy and procedure</p> <p>3 that prevents a police officer, as opposed to a</p> <p>4 supervisor, in requesting medical attention?</p> <p>5 A No.</p> <p>6 Q For an inmate who has an emergency?</p> <p>7 A No.</p> <p>8 Q Is there any medical care -- strike that. Other than</p> <p>9 CPR, is there any other medical care that's expected</p> <p>10 or should be provided to an inmate in the custody and</p> <p>11 control of the Milwaukee Police Department while</p> <p>12 they're at a city facility, such as the Prisoner</p> <p>13 Processing Section?</p> <p>14 A Well, as I say, I would expect common first aid to be</p> <p>15 applied if necessary.</p> <p>16 MR. GENDE: I'm going to take a moment and</p> <p>17 go off the record. We'll review my notes and let</p> <p>18 you know if we have any other questions. Thank</p> <p>19 you, Chief.</p> <p>20 THE WITNESS: Okay.</p> <p>21 THE REPORTER: Off the record.</p> <p>22 (Off the record 12:39 - 12:43)</p> <p>23 THE REPORTER: We're back on the record.</p> <p>24 BY MR. GENDE:</p> <p>25 Q Chief, was there a general understanding that</p>                                                                                                                                                                                           |



# Video Deposition of Chief Edward Flynn 4/2/2014

32 (Pages 125 to 128)

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| <p style="text-align: center;">Page 125</p> <p>1 prisoners in the custody of the Milwaukee Police<br/>2 Department who needed further medical care and could<br/>3 not be taken back to an emergency room should be<br/>4 transported to the Criminal Justice Facility?<br/>5 MS. LAPPEN: Objection as to form. It calls<br/>6 for speculation.<br/>7 MR. JONES: Objection.<br/>8 MS. LAPPEN: But go ahead.<br/>9 MR. JONES: Objection to form.<br/>10 A Yeah. I wouldn't say there was a general expectation.<br/>11 What I would say is that in this circumstance and in<br/>12 our subsequent evaluation of policy, we saw that as a<br/>13 way to overcome a circumstance we'd not encountered<br/>14 before. I know we've talked about it before, and that<br/>15 is hospital disagrees who would take the prisoner.<br/>16 We're not a medical facility.<br/>17 And so subsequently our thought has been, if we<br/>18 can't resolve it at a supervisory level, we will<br/>19 transport directly to CJF because they've got medical<br/>20 personnel there, and they can call for medical<br/>21 attention we've already [gesturing quotes] lost, if<br/>22 you will.<br/>23 At the time, there wasn't a general expectation<br/>24 along those lines because we hadn't had that<br/>25 circumstance before. But in the context of the time,</p>                                                                                                  | <p style="text-align: center;">Page 127</p> <p>1 emergency room with the same patient. That is one of<br/>2 the reasons why, from what I can discern, it made<br/>3 sense getting it to a different jurisdiction where<br/>4 them presenting it, if necessary, might have a<br/>5 different outcome.<br/>6 Q Sir, over the series of questions in this deposition,<br/>7 you've referred on numerous occasions of the emergency<br/>8 room rejecting Mr. Perry. Mr. Perry was accepted for<br/>9 admission into the emergency room, was he not?<br/>10 A Okay. Let me correct myself, then. Yes, he was in<br/>11 the emergency room. What he wasn't was admitted to<br/>12 the hospital.<br/>13 Q So he was treated at the emergency room and released<br/>14 with instructions, correct?<br/>15 A He was given a sedative, I know, and he was released<br/>16 with instructions, yes.<br/>17 Q So during the course of this deposition when you've<br/>18 said Mr. Perry was rejected at the emergency room,<br/>19 that would not be an accurate statement, true?<br/>20 A No. He was not admitted to the hospital. He was<br/>21 treated at the emergency room.<br/>22 Q At what point in time were your officers relieved from<br/>23 their duty to monitor Mr. Perry's health, safety, and<br/>24 welfare?<br/>25 A They weren't.</p> |
| <p style="text-align: center;">Page 126</p> <p>1 an effort was made, from my understanding, to move the<br/>2 paperwork along faster because we were not somebody<br/>3 equipped to hold somebody who had had seizures, had<br/>4 been prescribed seizure message -- medicine, and was<br/>5 under the influence of a sedative. So they wanted to<br/>6 get him out of there over to CJF, and that's -- that<br/>7 became the priority. Get the paperwork done.<br/>8 BY MR. GENDE:<br/>9 Q Was there any policy and procedure in place that<br/>10 prevented Mr. Perry, after he returned to PPS, from<br/>11 being taken back to an emergency room, whether it was<br/>12 Mount Sinai or somewhere else?<br/>13 A Well, this is an interesting issue, and it's an<br/>14 important issue, which I didn't even know at the time<br/>15 because that was my question. Nothing would have<br/>16 prevented us taking him back to the place that had<br/>17 just rejected him, but what I did find is there's<br/>18 rules against us "emergency room shopping." It's some<br/>19 kind of federal law that prevents us basically from<br/>20 taking a prisoner from place A that won't accept him<br/>21 to Froedtert's emergency room or somebody else's<br/>22 emergency room. I forget what the name of it is. You<br/>23 guys can look it up, but there is a proscription<br/>24 against it.<br/>25 And so we couldn't shop around for a different</p> | <p style="text-align: center;">Page 128</p> <p>1 MS. LAPPEN: I'll just object to the form.<br/>2 THE WITNESS: Yeah.<br/>3 MS. LAPPEN: Vague as to which officers.<br/>4 But go ahead and answer.<br/>5 A No one was relieved from their responsibility to<br/>6 monitor his condition.<br/>7 BY MR. GENDE:<br/>8 Q For instance, the two officers that transported Mr.<br/>9 Perry from PPS to the Criminal Justice Facility --<br/>10 A Mm-hmm.<br/>11 Q -- had a duty and obligation to continue and monitor<br/>12 Mr. Perry until he was discharged from their custody,<br/>13 correct?<br/>14 A That's correct.<br/>15 Q And at what point in time was he discharged from their<br/>16 custody prior to his death?<br/>17 A Well, I don't exactly know. I know from what I read<br/>18 that apparently he was being rejected, but I did not<br/>19 know that to be the truth at the time.<br/>20 Q Do you have an opinion as we sit here today whether or<br/>21 not Mr. Perry continued to be in the custody of<br/>22 Milwaukee Police Department at the time of his death?<br/>23 A That's a good question. It was my understanding that<br/>24 we were handing him off to CJF. We stayed by him. We<br/>25 didn't leave him there. But my understanding was he</p>                                                                 |

# Video Deposition of Chief Edward Flynn 4/2/2014

33 (Pages 129 to 132)

| Page 129                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 131                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <p>1 was in the process of being admitted when he had his<br/>2 cardiac event.</p> <p>3 Q So just so we're clear for the record, because this is<br/>4 an issue in the case --</p> <p>5 A Mm-hmm.</p> <p>6 Q -- is it the chief of police for the Milwaukee Police<br/>7 Department's opinion that Mr. Perry did or did not<br/>8 remain in the custody of MPD at the point he passed<br/>9 away?</p> <p>10 A You may be -- forgive me. All right? I'm not trying<br/>11 to engage in semantics.</p> <p>12 What my understanding all along has been, we were<br/>13 in the process of transferring custody from us to the<br/>14 sheriff's office. Our people stayed there, the<br/>15 sheriff's people were there, everybody was there. At<br/>16 what legal moment he was theirs, not ours, I can't<br/>17 answer. I do know that we were taking him where we<br/>18 believeD that he should be. It was my understanding<br/>19 he was in the process of being admitted, not rejected,<br/>20 when he had his event. I mean, I know it's a long<br/>21 answer to a short question, but that's the best I can<br/>22 do.</p> <p>23 Q Have you seen the tape of Mr. Perry at CJF?</p> <p>24 A I've seen part of it, yeah.</p> <p>25 Q And in the parts that you saw, did you see Milwaukee</p> | <p>1 of probability whether custody of Mr. Perry changed<br/>2 from the Milwaukee Police Department to the Milwaukee<br/>3 County Sheriff's Department at any point prior to his<br/>4 death?</p> <p>5 A The best I can say is it was in process. We were in<br/>6 the process of handing him off. If he was still<br/>7 technically ours, that may well have been so, but my<br/>8 understanding was it virtually happened in the middle<br/>9 of a transfer of custody.</p> <p>10 Q Have you ever had any discussions with Sheriff Clarke<br/>11 about Mr. Perry's incident?</p> <p>12 A No.</p> <p>13 Q Have you ever had any discussions with anybody at the<br/>14 sheriff's department about Mr. Perry's treatment after<br/>15 he arrived at the Criminal Justice Facility?</p> <p>16 A No.</p> <p>17 Q What is -- You've mentioned the CRIB? Am I --</p> <p>18 A Critical Incident Review Board, CIRB, yeah.</p> <p>19 Q Okay. Was there a Critical Incident Review Board<br/>20 instituted for Mr. Perry's death?</p> <p>21 A Yeah.</p> <p>22 Q Are there documents related to that?</p> <p>23 A Well, this again would have been about two years<br/>24 later, because it didn't exist at the time of his<br/>25 death. And there was a PowerPoint created that made</p>                 |
| Page 130                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 132                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1 Sheriff's Department personnel in the vicinity of Mr.<br/>2 Perry?</p> <p>3 A Well, I may be having recovered memory here. My<br/>4 recollection is they were on the scene.</p> <p>5 Q They were on the scene, and do you recall officers<br/>6 assist -- I'm sorry -- do you recall sheriff's<br/>7 deputies assisting Mr. Perry into the facility at CJF?</p> <p>8 A I don't really recall who did what.</p> <p>9 Q Let me ask you -- I'm sorry. How much experience have<br/>10 you had in police departments over the course of your<br/>11 career, sir?</p> <p>12 A A lot.</p> <p>13 Q How many years?</p> <p>14 A Over 40.</p> <p>15 Q And of those 40 years, how many have been designated<br/>16 as chief of police for different municipalities?</p> <p>17 A About 25.</p> <p>18 Q And how long have you been the chief for the Milwaukee<br/>19 Police Department?</p> <p>20 A Six years.</p> <p>21 Q All right. Based on your vast amount of experience,<br/>22 not only as a police officer over the last 40 years<br/>23 but as a chief of police for different municipalities<br/>24 for the last 25, and for the last six at the Milwaukee<br/>25 Police Department, are you able to say with any degree</p>                                                               | <p>1 the recommendation, as I've indicated earlier, that<br/>2 our policy needed to specifically address<br/>3 circumstances in which patients -- patient prisoners<br/>4 that we thought needed to be admitted to a hospital<br/>5 were rejected for admission. We needed to account for<br/>6 that when there was a difference of opinion. We did<br/>7 not have anything covering that. And so the<br/>8 evaluation made the recommendation and we subsequently<br/>9 adjusted our policy.</p> <p>10 Q Is the Criminal Incident Review Board made up of<br/>11 police officers?</p> <p>12 A That's correct.</p> <p>13 MS. LAPPEN: For clarification, it's<br/>14 "Critical," not "Criminal."</p> <p>15 MR. GENDE: Thank you.</p> <p>16 MS. LAPPEN: Critical Incident Review Board.</p> <p>17 THE WITNESS: Yeah. It's -- yeah.</p> <p>18 MR. GENDE: Thank you for the clarification.</p> <p>19 A Yeah. It's an important clarification. Its purpose<br/>20 is not to reinvestigate the incident. Its purpose is<br/>21 to disaggregate the incident and look for policy and<br/>22 training issues that would be applicable going forward<br/>23 from whatever we learned from that.</p> <p>24 Q And -- I'm sorry. Go ahead.</p> <p>25 A So it was in that context that adjustments would be</p> |

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34 (Pages 133 to 136)

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| <p style="text-align: center;">Page 133</p> <p>1 made to the policy.</p> <p>2 Q And the CIRB, is that made up of supervisory staff?</p> <p>3 A That's correct.</p> <p>4 Q Lieutenant and above?</p> <p>5 A Yeah.</p> <p>6 Q And how are those individuals appointed or elected to</p> <p>7 that position?</p> <p>8 A Well, they're appointed. They're from a variety of</p> <p>9 disciplines that usually involve people from the</p> <p>10 Inspections Bureau and the Police Academy, because the</p> <p>11 Police Academy covers training. Inspections is -- and</p> <p>12 we have individuals from, you know, a variety of</p> <p>13 disciplines on it.</p> <p>14 Q And this Critical Incident Review Board, is it tasked</p> <p>15 with reviewing incidents that only involve potential</p> <p>16 willful misconduct?</p> <p>17 A No, no. It's tasked with reviewing Critical Incidents</p> <p>18 that occurred, period. I mean, there may be</p> <p>19 absolutely no allegations of misconduct at all, but</p> <p>20 there could be a pursuit that occurs which is entirely</p> <p>21 within policy but, you know, there's a fatal car crash</p> <p>22 at the end.</p> <p>23 Okay. What might we have done, even though we</p> <p>24 clearly were within our standard policy, that might</p> <p>25 have, you know, prevented that? There might be a use</p>                                                                                                                                                                                  | <p style="text-align: center;">Page 135</p> <p>1 A No.</p> <p>2 Q Do you have any information or evidence as we sit here</p> <p>3 today as to how long blood was seeping from Mr.</p> <p>4 Perry's spit mask before he arrived at CJF?</p> <p>5 A No.</p> <p>6 Q Do you have any explanation or information or evidence</p> <p>7 as we sit here today that would suggest that your</p> <p>8 Officer Salinsky or Lopez were unable to view blood</p> <p>9 seeping from Mr. Perry's spit mask while they were</p> <p>10 transporting him or escorting him into the facility?</p> <p>11 A No.</p> <p>12 Q Have you ever inquired as to how long blood was</p> <p>13 seeping from Mr. Perry's spit mask before he arrived</p> <p>14 at CJF?</p> <p>15 A Well, this is the first time I've seen this report, so</p> <p>16 I don't know.</p> <p>17 Q Does that concern you, for the first time seeing this</p> <p>18 report, that your officers transported an individual</p> <p>19 who had blood seeping from his spit mask and carried</p> <p>20 him into a facility without calling for medical</p> <p>21 attention themselves?</p> <p>22 MS. LAPPEN: Objection as to the question.</p> <p>23 It misstates prior deposition testimony. It's</p> <p>24 vague and multiple.</p> <p>25 But go ahead and answer.</p> |
| <p style="text-align: center;">Page 134</p> <p>1 of force incident that's fully within the current</p> <p>2 policies and the law. Was there any way that policy</p> <p>3 or training might have come up with a better outcome?</p> <p>4 So, no, we don't start from the standpoint of</p> <p>5 we're suspicious of what occurred. We start from the</p> <p>6 standpoint of this is a critical incident usually</p> <p>7 resulting in a death. Let's examine it from the</p> <p>8 standpoints of our training and our policies to see if</p> <p>9 any issues need to be addressed.</p> <p>10 Q Sir, I'd like to show you what we've previously marked</p> <p>11 as Exhibit No. 2. This is a county document relative</p> <p>12 to their major incident report, and their supervisor,</p> <p>13 Sergeant Hale, prepared an outline as it relates to</p> <p>14 Mr. Perry's sequence of events once he arrived at CJF.</p> <p>15 Under the entry "2040 hours" Sergeant Hale documented,</p> <p>16 "MPD Officers Frank Salinsky and Richard Lopez</p> <p>17 escorted Prisoner Franklin into prebook in leg</p> <p>18 restraints, handcuffed behind back, and wearing a spit</p> <p>19 mask." Do you have any evidence as we sit here today</p> <p>20 that did not in fact occur as she documented?</p> <p>21 A No.</p> <p>22 Q She further documents, "Blood was seeping from the</p> <p>23 spit mask." Do you have any evidence or information</p> <p>24 as we sit here today that her notation in this regard</p> <p>25 is inaccurate or untrue?</p> | <p style="text-align: center;">Page 136</p> <p>1 A Well, I mean, they're getting him to where we wanted</p> <p>2 him to be, which was a prison facility with a medical</p> <p>3 capability, and a registered nurse saw him within five</p> <p>4 minutes of our arriving there. So this is what I</p> <p>5 would hope would have occurred.</p> <p>6 BY MR. GENDE:</p> <p>7 Q You would agree that a prisoner who has blood seeping</p> <p>8 from his spit mask could be exhibiting a medical</p> <p>9 emergency, true?</p> <p>10 MR. JONES: Objection to form.</p> <p>11 MS. LAPPEN: Join.</p> <p>12 A Yes, they could be.</p> <p>13 BY MR. GENDE:</p> <p>14 Q You would agree that a prisoner who has blood seeping</p> <p>15 from his spit mask -- strike that. You would agree</p> <p>16 that the condition documented by Sergeant Hale, which</p> <p>17 reflects Mr. Perry arrived at the CJF with blood</p> <p>18 seeping from his spit mask --</p> <p>19 A Mm-hmm.</p> <p>20 Q -- would be a change in condition from how Mr. Perry</p> <p>21 was discharged from the emergency room earlier in the</p> <p>22 evening, correct?</p> <p>23 A Yes.</p> <p>24 MS. LAPPEN: Objection as to foundation.</p> <p>25 But go ahead and answer.</p>                                                                |

# Video Deposition of Chief Edward Flynn 4/2/2014

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| <p style="text-align: center;">Page 137</p> <p>1 A Yep.</p> <p>2 BY MR. GENDE:</p> <p>3 Q Would you expect as a law enforcement official and</p> <p>4 supervisor and chief for 25 years that in the event a</p> <p>5 prisoner has blood seeping from his spit mask that he</p> <p>6 would not receive any medical attention for five</p> <p>7 minutes at the Criminal Justice Facility?</p> <p>8 MS. LAPPEN: Objection. Calls for</p> <p>9 speculation, and foundation.</p> <p>10 But go ahead and answer.</p> <p>11 MR. JONES: Objection to form.</p> <p>12 A I think five minutes is reasonable.</p> <p>13 (Exhibit 72 identified)</p> <p>14 BY MR. GENDE:</p> <p>15 Q I'm going to show you what we've marked as Exhibit No.</p> <p>16 72, which is a further supplement to the Milwaukee</p> <p>17 Police Department's investigation in the events</p> <p>18 surrounding Mr. Perry's death, taken by your</p> <p>19 detectives, and they spoke to one of the paramedics.</p> <p>20 I'm on the second page of this exhibit.</p> <p>21 Let me know when you're ready, Chief, and I'll</p> <p>22 ask a question.</p> <p>23 A Sure. Go ahead.</p> <p>24 Q On the second page, your detectives documented, "The</p> <p>25 nurses told Kimber that they knew Perry was in trouble</p> | <p style="text-align: center;">Page 139</p> <p>1 Mr. Perry was suffering from an uncontrolled bleed</p> <p>2 before he arrived at CJF?</p> <p>3 A No.</p> <p>4 Q Does it concern you as the chief of police that Mr.</p> <p>5 Perry may have been suffering from an uncontrolled</p> <p>6 bleed while he remained at the Prisoner Processing</p> <p>7 Section?</p> <p>8 MS. LAPPEN: Objection as to form and</p> <p>9 foundation.</p> <p>10 But go ahead and answer.</p> <p>11 A If that was true, yes.</p> <p>12 BY MR. GENDE:</p> <p>13 Q And you would agree that there is evidence suggesting</p> <p>14 Mr. Perry suffered from an uncontrolled bleed at the</p> <p>15 Prisoner Processing Section based on your custodial</p> <p>16 employee Puechner's report to a detective that he was</p> <p>17 cleaning up gobs of blood, spit, and feces in the area</p> <p>18 where Mr. Perry was laying, true?</p> <p>19 MS. LAPPEN: Objection as to form and</p> <p>20 foundation.</p> <p>21 A I don't know that that presented as uncontrolled</p> <p>22 bleeding. I will say that, yes, blood was found in</p> <p>23 the location where he had been laying down.</p> <p>24 MR. GENDE: I have nothing further. I</p> <p>25 appreciate your time, Chief.</p>            |
| <p style="text-align: center;">Page 138</p> <p>1 when he arrived. He could not walk or stand." Do you</p> <p>2 have any reason to dispute this information --</p> <p>3 MS. LAPPEN: Objection --</p> <p>4 BY MR. GENDE:</p> <p>5 Q -- generated by your detective?</p> <p>6 MS. LAPPEN: Objection as to form and</p> <p>7 foundation.</p> <p>8 Go ahead and answer.</p> <p>9 A It is consistent with what occurred shortly after he</p> <p>10 was administered his tranquilizer.</p> <p>11 BY MR. GENDE:</p> <p>12 Q The detective goes on to document, "They removed the</p> <p>13 spit mask. Perry was bleeding from his nose and left</p> <p>14 ear." Do you have any information as we sit here</p> <p>15 today or evidence to suggest that is untrue or</p> <p>16 incorrect?</p> <p>17 A No.</p> <p>18 Q Your detective -- and now I'm on the first page of the</p> <p>19 incident report, Chief. At the bottom of the page, he</p> <p>20 documents, "On the second run, they," meaning fire</p> <p>21 department, "were sent to an uncontrolled bleeding at</p> <p>22 CJF." Do you see where I read that?</p> <p>23 A Yes.</p> <p>24 Q Do you know how long, based on your review of all the</p> <p>25 evidence to date and the reports and the videos, that</p>               | <p style="text-align: center;">Page 140</p> <p>1 THE WITNESS: Thank you.</p> <p>2 THE REPORTER: Off the record briefly.</p> <p>3 (Off the record 1:01 - 1:01)</p> <p>4 THE REPORTER: We're back on the record.</p> <p>5 Mr. Jones.</p> <p style="text-align: center;">E X A M I N A T I O N</p> <p>6 BY MR. JONES:</p> <p>7 Q Chief, do you have any personal knowledge one way or</p> <p>8 the other what did or did not happen with respect to</p> <p>9 Mr. Perry once he arrived at the CJF on the night in</p> <p>10 question?</p> <p>11 A No.</p> <p>12 Q Do you have any personal knowledge as to whether</p> <p>13 sheriff's office personnel were in the process of</p> <p>14 accepting Mr. Perry or rejecting him, that is, into</p> <p>15 the custody of the sheriff's office during the events</p> <p>16 that occurred at the CJF that night?</p> <p>17 A No.</p> <p>18 Q And if I understand your prior testimony on the</p> <p>19 subject and given that you don't have any personal</p> <p>20 knowledge on the subject, do I understand that you are</p> <p>21 not offering an opinion one way or the other whether</p> <p>22 Mr. Perry -- or, rather, whose custody Mr. Perry was</p> <p>23 in at the time of his death?</p> <p>24 A No.</p> <p>25</p> |



# Video Deposition of Chief Edward Flynn 4/2/2014

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1 Q So that is a correct statement: you are not offering  
2 any opinion?

3 A No. I'm not trying to assign who it was. I, quite  
4 honestly, the handoff was occurring. I don't know.  
5 That's for the attorneys to sort out. As far as my  
6 understanding was, the handoff was in the process of  
7 taking place.

8 Q And, but you don't have any personal knowledge on the  
9 subject, correct?

10 A No.

11 Q That is correct, you don't have personal knowledge?

12 A That's correct, yeah.

13 MR. JONES: Okay. Thank you, Chief. That's  
14 it.

15 THE REPORTER: Okay. There being no further  
16 questions, the deposition is concluded at 1:03  
17 p.m. Off the record.

|                          |                               |                           |                           |                           |
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